

HEARING  
BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

In the Matter of: )  
 )  
Application for )  
Certification for the ) Docket No. 98-AFC-4  
SUNRISE COGENERATION AND )  
POWER PROJECT (SUNRISE) )  
----- )

CALIFORNIA ENERGY COMMISSION  
FIRST FLOOR HEARING ROOM B  
1516 NINTH STREET  
SACRAMENTO, CALIFORNIA

THURSDAY, OCTOBER 14, 1999

1:20 P.M.

Reported by:  
Debi Baker  
Contract No. 170-99-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Michal Moore, Presiding Member

David Rohy, Vice Chairman  
Associate Member

STAFF PRESENT

Gary Fay, Hearing Officer

Bob Eller, Adviser to Vice Chairman Rohy

Shawn Pittard, Adviser to Commissioner Moore

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P R O C E E D I N G S

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1:20 p.m.

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PRESIDING MEMBER MOORE: I apologize for being late. Let me identify for the record that we are in evidentiary hearings for the Sunrise Cogeneration Power Plant Project which is docket 98-AFC-4. And we have gone through one day of hearings and heard testimony on project description alternatives, general conditions, need conformance, facility design, power plant reliability, power plant efficiency, waste management, transmission line safety and nuisance, geology and paleontology, cultural resources and noise.

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And we will today consider one of those items a carryover, and that's cultural resources. Hazardous materials management, land use and visual resources.

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We're scheduled firmly now as to the order that we've assigned today for a schedule on Friday, November 5th, for traffic and transportation, socioeconomic, transmission system engineering, worker safety and fire protection.

25

And at this point I think the best way

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1 to begin would be to revisit the cultural  
2 resources, see if we can recap where we were on  
3 that, and the condition. And then we'll move into  
4 today's materials.

5 Let me ask, Commissioner Rohy, do you  
6 have comments that you'd like to make following  
7 the hearing that we had two days ago?

8 VICE CHAIRMAN ROHY: No, let's proceed.

9 PRESIDING MEMBER MOORE: Longer remarks  
10 than you had before.

11 VICE CHAIRMAN ROHY: My vocabulary is  
12 increasing.

13 PRESIDING MEMBER MOORE: Mr. Fay, would  
14 you like to add anything to the opening remarks  
15 here?

16 HEARING OFFICER FAY: Just preliminary  
17 housekeeping measures that the hearing that  
18 Commissioner Moore just mentioned will begin  
19 November 5th, that's a Friday, at 9:00 a.m. in  
20 Hearing Room A. And we hope to have copies of the  
21 signed notice available for you before we adjourn  
22 today.

23 In addition, the Transmission Agency of  
24 Northern California or TANC is a new party in the  
25 case. They've petitioned to intervene and their

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1 petition was granted.

2 And counsel for the applicant, I think  
3 correctly, raised the question of since they only  
4 petitioned on the day of the prehearing  
5 conference, whether we were going to receive a  
6 prehearing conference statement so that the  
7 parties are on notice as to what TANC's plans are.

8 And so counsel for TANC is here and I'd  
9 like Ms. Johnson to address that issue.

10 Could you be sure that you're in front  
11 of a microphone? Identify yourself for the  
12 record, please.

13 MS. JOHNSON: Can you hear me?

14 HEARING OFFICER FAY: It's not an  
15 amplification system, it's just for the court  
16 recording.

17 MS. JOHNSON: Oh, okay. My name is  
18 Elizabeth Johnson. I'm with the firm of DeCuir  
19 and Somach here in Sacramento representing the  
20 Transmission Agency of Northern California, who  
21 has intervened in this matter.

22 We appreciate the opportunity to  
23 intervene, and are sensitive to the Committee's  
24 hearing schedule here, and are anxious to avoid  
25 disrupting that.



1           We have, just for your information we  
2           have informally requested some information from  
3           the applicant that will assist us in preparing our  
4           testimony in a timely fashion. And are in the  
5           process of working out that exchange of  
6           information.

7           In the meantime I did speak with Mr. Fay  
8           and committed to presenting a prehearing  
9           conference statement to you outlining our  
10          testimony and identifying our witnesses no later  
11          than next Friday, the 22nd. If possible, we will  
12          have it to you sooner than that and to the  
13          applicant sooner than that.

14          On the matter of additional data, we  
15          anticipate being able to work out the exchange of  
16          information informally, and I have written to the  
17          applicant's attorney and spoken with him on that.  
18          Unfortunately didn't have a chance to follow up  
19          before this.

20          But in the event that we will have to  
21          make a formal data request the 30-day timeline for  
22          responding to a data request would delay our  
23          ability to present testimony based on that data.

24          And accordingly, in the event we do have  
25          to make a formal data request, we would like the

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1 Committee to consider shortening time for response  
2 on that. It's sort of out of order to ask you to  
3 consider something that hasn't happened yet, but I  
4 might not have an opportunity to speak with you  
5 again before that.

6 Is that clear? Do you have any  
7 questions?

8 PRESIDING MEMBER MOORE: Well, the  
9 request is clear. Whether or not we would accede  
10 to it or not, I can't tell you. But, --

11 MS. JOHNSON: Maybe something that could  
12 be taken under submission and we can follow up  
13 with the written request.

14 PRESIDING MEMBER MOORE: We'll consider  
15 it, and Commissioner Rohy and I will caucus on it  
16 with our Hearing Officer, and we'll be prepared to  
17 respond, but I can't guarantee that you'll get  
18 that.

19 MS. JOHNSON: Okay, thank you.

20 PRESIDING MEMBER MOORE: In fact, I  
21 guess I would operate under the assumption that  
22 you probably won't, and then be surprised if you  
23 do. That's probably the better way to handle it  
24 at this --

25 MS. JOHNSON: Right, that's what we're

6

1 assuming, as well.

2 PRESIDING MEMBER MOORE: -- this point.

3 MS. JOHNSON: And otherwise, with  
4 respect to today's proceedings, TANC doesn't  
5 intend to participate. We'll just be here  
6 observing.

7 Thank you.

8 HEARING OFFICER FAY: And could you tell  
9 us, for the record, just as a preview to your  
10 prehearing conference statement the areas that you  
11 do plan to present testimony in?

12 MS. JOHNSON: The transmission system  
13 engineering area, and also air quality. And it  
14 will be limited to those two areas.

15 HEARING OFFICER FAY: And what aspect of  
16 air quality?

17 MS. JOHNSON: Cumulative impacts.

18 HEARING OFFICER FAY: Thank you. Any  
19 response, Mr. Grattan?

20 MR. GRATAN: First, I didn't get a date  
21 when testimony is going to be submitted. I got a  
22 date for prehearing conference statement.

23 HEARING OFFICER FAY: Well, we don't  
24 have a date for any of the parties to submit their  
25 testimony, because we don't know when staff will

7

1 be submitting its testimony.

2 This is part of -- these two subjects  
3 are part of the last set of hearings.

4 MR. GRATAN: Right. And not knowing,  
5 other than our conversation regarding data sets, I  
6 have no idea of the specificity of the request.  
7 It may well be something that's docketed. And if  
8 it's docketed I would hope that's what it is.

9 HEARING OFFICER FAY: Right. Counsel  
10 just reminded me I may have erred in my statement.  
11 Staff has actually filed in all areas. But I  
12 assume because of the significance of some of the  
13 information that is expected to come in, there'll  
14 be modifications.

15 MS. HOLMES: Staff is planning to file  
16 its final transmission system engineering  
17 testimony tomorrow. Along with traffic and  
18 transportation, socioeconomics and --

19 HEARING OFFICER FAY: Right, but  
20 regarding the four areas that would be trailing,  
21 air, public health, TSE and worker safety -- not  
22 TSE.

23 MS. HOLMES: Water is the last issue  
24 that's trailing. Water and biology. Excuse me,  
25 biology's been filed. Water.

8

1 HEARING OFFICER FAY: Okay, so we're  
2 talking about air public health, water and --

3 MS. HOLMES: I believe that's it, unless  
4 there are issues relating to H2S emissions for  
5 biology. In that case we will file errata. But  
6 we don't, at this point, anticipate the need to do  
7 that.

8 But we are -- my point was merely that  
9 you had said there was no date for transmission  
10 system engineering. Staff's planning to file  
11 testimony on that tomorrow.

12 HEARING OFFICER FAY: Right, and we've  
13 called for -- the notice and order that will be  
14 available today calls for the parties to file  
15 their transmission system engineering testimony on  
16 Monday, the 26th.

17 Staff files it on the 15th. The parties  
18 respond on the 26th. So, --

19 PRESIDING MEMBER MOORE: Well, I think  
20 you just defined when you're going to have -- I  
21 apologize, but it sounds to me like the answer is  
22 26 October, close of business.

23 HEARING OFFICER FAY: For that  
24 particular topic.

25 PRESIDING MEMBER MOORE: Right.

9

1 All right, other --

2 HEARING OFFICER FAY: I'm sorry?

3 MR. GRATAN: Point of clarification.

4 I'm sorry. The order --

5 PRESIDING MEMBER MOORE: The order which  
6 you'll see before the end of today, which we just  
7 signed, and which is being duplicated as I  
8 understand it, right now, will talk about the  
9 topic areas, basically none of this should be a  
10 surprise, since they're published on this sheet,  
11 which everyone's had available to them for some  
12 time, will address transmission system engineering  
13 on the 5th.

14 And what we're saying is -- or staff is  
15 telling us they'll have their remarks in by  
16 tomorrow, close of business tomorrow on  
17 transmission system engineering. And what I've  
18 just informed counsel is that the date for  
19 submission for other parties will have to be  
20 limited to the end of business 26 October.

21 So that defines the time parameters.  
22 Other administrative or housekeeping items, Gary?

23 HEARING OFFICER FAY: No. I think with  
24 that we're ready to return to cultural resources.

25 PRESIDING MEMBER MOORE: Okay, on the

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1 cultural resources matter last we heard there was  
2 a proposed new condition that staff had in mind.  
3 Mr. Grattan have you been privy to that?

4 MR. GRATTAN: Yes, I saw it just before  
5 coming in here, but I'm prepared to address that.

6 PRESIDING MEMBER MOORE: You saw it just  
7 before walking in here? That's the first time it  
8 was available to you?

9 MR. GRATTAN: The first time the final  
10 draft was available to me. I did see a fax of a  
11 previous draft.

12 PRESIDING MEMBER MOORE: How much  
13 different was the previous draft than the one you  
14 saw when you came in?

15 MR. GRATTAN: Slightly different,  
16 slightly different. There's a new option in the  
17 one I just saw.

18 PRESIDING MEMBER MOORE: Is there? Are  
19 we likely to get any more options before I get the  
20 next full sentence out, or are we likely to -- is  
21 it likely to be as complete as it's going to be?  
22 Can we debate it in a final form?

23 MS. HOLMES: I think staff is prepared  
24 to testify as to why this particular condition of  
25 certification is, in staff's opinion, necessary to

11

1 prevent significant adverse impacts.

2 PRESIDING MEMBER MOORE: I assumed that  
3 that would be the natural reason for even having a  
4 condition like this. Well, since I know -- Mr.  
5 Therkelson came and talked to me just in general  
6 terms about all the procedures that we use here.

7 And since I know that the siting staff  
8 does monitor these proceedings, and I'll have at  
9 least a hand in some of the other cases, let's not  
10 do this again. Let's make sure that the applicant  
11 and the Committee have these conditions thought  
12 out ahead of time.

13 We've had what, only about five years to  
14 practice for this, and kind of get these together.  
15 So, let's see if we can have these at least typed  
16 up ahead of time before, so there are not faxes  
17 going out back and forth.

18 Thank you.

19 Ms. Matthews, do you want to talk about  
20 the condition?

21 MS. HOLMES: Could I get a little  
22 background --

23 PRESIDING MEMBER MOORE: Oh, I'm sorry,  
24 Caryn, excuse me.

25 MS. HOLMES: Thank you.



12

1                   We have been discussing this issue for  
2 quite some time. It concerns the fact that some  
3 of the property that's going to be subject to the  
4 activities that the Committee has identified as  
5 indirect impacts of the project is not owned by  
6 the applicant.

7                   As a result, staff has proposed a  
8 condition of certification to address potential  
9 impacts associated with that. This condition of  
10 certification is very similar to, and is in fact  
11 modeled upon a condition of certification that  
12 staff and applicant reached agreement on in the  
13 High Desert proceeding in which there was a 32-  
14 mile natural gas pipeline that was, in part, owned  
15 by third parties.

16                   So with that I guess what I'll simply do  
17 is lay some foundation for this.  
18 Whereupon,

19                   KATHRYN MATTHEWS  
20 was recalled as a witness herein, and having been  
21 previously duly sworn, was examined and testified  
22 further as follows:

23                   DIRECT EXAMINATION

24                   BY MS. HOLMES:

25                   Q       Ms. Matthews, do you have a copy of what

13

1 was identified last Tuesday as exhibit 28?

2 A Yes, I do.

3 Q And is it entitled supplement to staff's  
4 testimony Sunrise Cogeneration and Power Project  
5 final staff assessment, cultural resources?

6 A Yes.

7 MS. HOLMES: We have copies available  
8 for anybody who would like to take a look at that  
9 and hasn't seen it.

10 HEARING OFFICER FAY: The one dated  
11 October 14 at the bottom?

12 MS. HOLMES: Yes, it is. BY MS. HOLMES:

13 Q Ms. Matthews, could you please explain  
14 why you believe this condition is necessary to  
15 prevent significant adverse impacts to cultural  
16 resources?

17 A This condition specifically goes to the  
18 potential for indirect impacts associated with  
19 development of 700 new oil production wells, steam  
20 injection wells, access roads, steam delivery  
21 pipelines, things that would be taking place  
22 within a three-quarter mile radius of the proposed  
23 Sunrise Power Plant site. And they will be served  
24 by steam produced at the Sunrise Project.

25 CEQA also requires us to look at

14

1 indirect impacts and if there is a potential for  
2 the impact, we must propose mitigation measures.

3 The potential for impacts in this  
4 additional steam field area is similar to that in  
5 the project area, even in spite of the extensive  
6 development for oil production.

7 It's become apparent on other projects  
8 in this same vicinity that there still are  
9 cultural resource materials that pop up  
10 unexpectedly in the course of construction.

11 An example of that is the Midway Sunset  
12 Project, I think it was two years ago, added a  
13 transmission switchyard and some additional  
14 buildings. And in both instances there were  
15 significant isolated resources that were  
16 encountered unexpectedly at a shallow depth in a  
17 site that had presumably been totally disturbed  
18 numerous times in the course of oil field  
19 activities and power plant construction.

20 So the potential remains that there may  
21 be artifacts, cultural materials under the ground  
22 that would unexpectedly be encountered.

23 I believe that we and the applicant  
24 concurred that it would be beneficial to have a  
25 cultural resource specialist available during

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1 activities related to development of the 700 new  
2 wells.

3

4 And we have prepared a rough draft on  
5 Tuesday, the applicant provided us with a revised  
6 version yesterday. And we have worked with that.  
7 The intent is to be sure that there is a cultural  
8 resource person available who's qualified to make  
9 a determination if something is encountered, to  
10 make a determination of significance, and to  
11 implement mitigation as needed.

12

13 I think the critical factor in that is  
14 the designation of the cultural resource  
15 specialist. And because we need a link between  
16 Sunrise, as the applicant, and TCI, who is the  
17 owner and doer of the 700 wells within the three-  
18 quarter mile radius, this condition is to somehow  
19 connect the project and the project's conditions  
20 to that development to make sure that the  
21 underlying impacts are mitigated.

22

23 Do you want me to go through the various  
24 conditions or --

25

26 PRESIDING MEMBER MOORE: No, I don't  
27 think that's necessary. Caryn was trying to --

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29 MS. HOLMES: Just saying that --

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31 MS. HOLMES: -- she was trying to make  
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1       sure that we get the nature of this on the table.  
2       Now what I'd like to do is just make sure that we  
3       all have the conditions in front of us, Kathryn,  
4       so let's find out -- Mr. Grattan, --

5               MR. GRATTAN:    Yes.

6               PRESIDING MEMBER MOORE:   -- are you in  
7       concurrence with these?

8               MR. GRATTAN:    No.

9               PRESIDING MEMBER MOORE:   Okay.   Then,  
10       why don't you tell us where, since we all do have  
11       this in front of us, --

12              MR. GRATTAN:    Very well.

13              PRESIDING MEMBER MOORE:   -- why don't  
14       you tell us where you disagree, and then we can  
15       kind of get this on the table.

16              MR. GRATTAN:    As well as tell where, may  
17       I tell why?

18              PRESIDING MEMBER MOORE:   I'm sure you're  
19       probably going to anyway, so --

20                       (Laughter.)

21              PRESIDING MEMBER MOORE:   -- the answer  
22       is yes.   Well, actually I assume that this would  
23       be in the form of cross-examination.   In other  
24       words, that you're going to ask questions of the  
25       witness.   Am I --

17

1 MR. GRATAN: I don't need to ask  
2 question of the witness. I know what the  
3 condition says, and I need to express a policy and  
4 legal objection, or indicate the reasons why we're  
5 opposed to a particular part of that.

6 PRESIDING MEMBER MOORE: Okay, well,  
7 then maybe just in a formal sense, I have just  
8 stepped off the curb and I need to step back for a  
9 second.

10 MR. GRATAN: Fine.

11 PRESIDING MEMBER MOORE: You have no  
12 cross-examination?

13 MR. GRATAN: I have no cross-  
14 examination.

15 PRESIDING MEMBER MOORE: All right. For  
16 the intervenors?

17 MS. POOLE: No questions.

18 PRESIDING MEMBER MOORE: And are there  
19 any other intervenors in the audience who would  
20 like to ask questions or cross-examine the  
21 witness?

22 I stand corrected in my procedure, I  
23 apologize for that error. And let me come back,  
24 then, and ask, Mr. Grattan, your position. And do  
25 you have a witness here today, by the way?

18

1 MR. GRATTAN: No, we do not have a  
2 witness here today.

3 PRESIDING MEMBER MOORE: Okay.

4 MS. HOLMES: Mr. Fay, if I could, would  
5 it be appropriate to move this exhibit into  
6 evidence before we undertake argument or  
7 discussion?

8 HEARING OFFICER FAY: Fine. Is there  
9 objection to identifying this as exhibit 28, and  
10 receiving it into evidence?

11 MR. GRATTAN: No objection.

12 PRESIDING MEMBER MOORE: Did we not do  
13 that? It seems -- I have it --

14 MS. HOLMES: We identified it, we did  
15 not enter it into the record.

16 PRESIDING MEMBER MOORE: I see, excuse  
17 me. Fine, thank you, Caryn.

18 (The above-referenced document was  
19 marked CEC Staff exhibit 28 for  
20 identification, and was received in  
21 evidence.)

22 PRESIDING MEMBER MOORE: Mr. Grattan.

23 MR. GRATTAN: I would like to point you  
24 to the exhibit, and point you to the language that  
25 is in the main paragraph of cultural-18. And the

19

1 language that, aside from some minor things which  
2 I can get into later, if you want to, the language  
3 to which the applicant has objections is entering  
4 into a legally binding agreement, that's just  
5 prefatory, we don't have any problem with that.

6 That, number one, allow the project  
7 owner access to the property in order to comply  
8 with all conditions of certification of the  
9 project that pertain to nonfederal areas within  
10 the three-quarter mile radius zone of influence,  
11 or;

12 Two, comply with the conditions of  
13 certification that pertain to the nonfederal areas  
14 within the three-quarter mile radius zone of  
15 influence, the project owner shall remain  
16 responsible for insuring that measures are  
17 appropriately implemented.

18 What these conditions, taken together,  
19 do -- a little bit o language -- is they put the  
20 power plant developer in the position of insuring  
21 or actually complying with a commitment that is  
22 given by the thermal host, a company which is in a  
23 different business all together, the conditions go  
24 to TCI, its successors and assigns, whoever that  
25 might be.



20

1                   Now, if this Commission still is  
2                   committed to the encouragement of cogeneration  
3                   imposing a condition like this on a cogeneration  
4                   developer makes that would-be cogeneration  
5                   developer a hall monitor for the business of the  
6                   thermal host.

7                   It would make SMUD, for example,  
8                   locally, in the business of monitoring how  
9                   Campbell Soup makes soup, or cans, if that be the  
10                  case. It would put SMUD in the position of being  
11                  responsible for the implications coming from  
12                  Proctor and Gamble and its making of consumer  
13                  products.

14                  I don't think a power plant developer,  
15                  given the choice of building a stand-alone or  
16                  building a cogeneration project, would opt to  
17                  build a cogeneration project, because with it  
18                  comes a heavy monitoring responsibility.

19                  I don't know if a bank would consider  
20                  financing an enterprise which is not just the  
21                  enterprise of the power plant developer, but in  
22                  fact the enterprise of the third-party thermal  
23                  host.

24                  Now, that's the policy issue.

25                  On the legal grounds, there is a

21

1 provision in the California Environmental Quality  
2 Act, which I even had before me, section 21004 of  
3 the Public Resources Code, which says in  
4 mitigating a significant impact of the project on  
5 the environment, a public agency may exercise only  
6 those express or implied powers provided by a law  
7 other than this division, i.e., other than CEQA.

8 So, in order to mitigate for an impact  
9 there must be some authority, there must be some  
10 jurisdiction to do that.

11 Now, clearly this Commission could  
12 potentially deny a project if there were  
13 significant impacts in an area beyond its  
14 jurisdiction. Could it condition it, I don't  
15 know.

16 The Energy Commission's regulations  
17 specify, and this gets into the comparison of the  
18 32-mile pipeline in I guess it was High Desert.  
19 The Commission licenses power plants and  
20 appurtenant or related facilities. The Commission  
21 regulations, I believe, include a power plant's  
22 fuel supply as a related or appurtenant facility.

23 This Commission has every authority to  
24 put the power plant developer in the position of  
25 monitoring how the environmental impacts of its

22

1 fuel, its immediate fuel supply.

2 But, the regs also say that absent the  
3 unusual or compelling circumstances the thermal  
4 host of a cogeneration facility are not related  
5 facilities.

6 Big difference between a pipeline of a  
7 fuel -- excuse me, a fuel supply pipeline  
8 dedicated to the power plant and an independent  
9 business supplied steam by a power plant.

10 So, long speech, but what this applicant  
11 is committed to do, and in fact offered, was to  
12 enter into an agreement with a third-party host to  
13 provide for every substantive condition which is  
14 suggested by staff. But we don't believe that it  
15 is fair, wise policy, or in fact legal, to require  
16 the power plant developer, the applicant before  
17 the Commission, to insure compliance of the  
18 thermal host with CEC conditions.

19 We'll do an agreement. We'll bind the  
20 third-party developer to follow these conditions.  
21 But we don't believe we should be in the business  
22 of enforcement of them.

23 PRESIDING MEMBER MOORE: Okay, I'm going  
24 to let everyone else have a chance to respond to  
25 that, but let me just ask a couple of questions

23

1 first --

2 MR. GRATTAN: Sure.

3 PRESIDING MEMBER MOORE: -- to make sure  
4 that I understand the distinction that you're  
5 clearly trying to get across to us, and which I  
6 may not be picking up.

7 There's a set of conditions down here,  
8 if we take away the paragraph which sets up the  
9 umbrella over these conditions that's in paragraph  
10 cultural 18. The conditions, themselves, you  
11 agree, are relevant and appropriate?

12 MR. GRATTAN: We do, we have one minor  
13 change to condition A in the first line. We'd  
14 like it to specify that they would use the  
15 applicant's cultural resource specialist. If TCI  
16 is comfortable with that, we don't have to go  
17 through a double qualification process.

18 PRESIDING MEMBER MOORE: So what you're  
19 saying is the applicant's cultural resource  
20 specialist who meets the test of being qualified  
21 per our regulations, that kind of thing, got to  
22 be --

23 MR. GRATTAN: Yeah, we can say TCI shall  
24 utilize -- shall use the applicant's cultural  
25 resources specialist.

24

1                   PRESIDING MEMBER MOORE:   With some  
2   disclaimer as far as qualifications go so that  
3   they meet --

4                   MR. GRATTAN:   Right, we'd have to  
5   qualify --

6                   PRESIDING MEMBER MOORE:   -- some test?

7                   MR. GRATTAN:   -- under a previous  
8   condition.

9                   PRESIDING MEMBER MOORE:   So with that  
10   you don't object that the set of conditions are  
11   appropriate?

12                  MR. GRATTAN:   No, nor the verification.

13                  PRESIDING MEMBER MOORE:   Okay.   So, the  
14   distinction then that needs to be drawn by us in  
15   your remarks is one, whether or not this ought to  
16   be imposed by other than an agreement that you  
17   enter into --

18                  MR. GRATTAN:   Correct.

19                  PRESIDING MEMBER MOORE:   -- with the  
20   thermal host --

21                  MR. GRATTAN:   That's correct.

22                  PRESIDING MEMBER MOORE:   -- and that the  
23   agreement should be one that you enter into, and  
24   not one that we mandate because you maintain we  
25   don't have the authority to mandate the thermal

25

1 host to comply, so --

2 MR. GRATAN: Well, we hate to tell an  
3 agency it doesn't have authority.

4 PRESIDING MEMBER MOORE: Just did,  
5 but --

6 MR. GRATAN: We don't mind you  
7 mandating the entrance into an agreement. We do  
8 mind insuring that we enforce it.

9 PRESIDING MEMBER MOORE: All right, and  
10 can I then imply by that, that the agreement that  
11 you had in mind with the thermal host is one that  
12 would effectively allow said cultural specialist  
13 to enter those properties at whatever appropriate  
14 time was appropriate in order to --

15 MR. GRATAN: Absolutely.

16 PRESIDING MEMBER MOORE: -- validate  
17 these conditions?

18 MR. GRATAN: That's correct.

19 PRESIDING MEMBER MOORE: Any time into  
20 the future?

21 MR. GRATAN: Any time, any time there  
22 is --

23 PRESIDING MEMBER MOORE: And that the  
24 agreement that --

25 MR. GRATAN: -- under the conditions.

26

1                   PRESIDING MEMBER MOORE:   -- you have in  
2                   mind with the thermal host would specify any time  
3                   into the future?   I mean --

4                   MR. GRATTAN:   Yes.   Yes.

5                   PRESIDING MEMBER MOORE:   Well, anytime  
6                   there's a disturbance.

7                   MR. GRATTAN:   This has to do with the  
8                   700 wells in the three-quarter mile area.

9                   PRESIDING MEMBER MOORE:   Okay, right.

10                  MR. GRATTAN:   Limited to that, yeah.

11                  PRESIDING MEMBER MOORE:   We're clear on  
12                  that.

13                  MR. GRATTAN:   There's no problem with  
14                  that.

15                  PRESIDING MEMBER MOORE:   At least I am,  
16                  at this point.

17                  So what this boils down to, then, is the  
18                  nature of mandating the agreement for access.   And  
19                  what you want to do is to do it in the form of an  
20                  agreement signed by you and the thermal host.   And  
21                  the way you interpret our condition is that we  
22                  mandated through you, bypassing you, onto the  
23                  thermal host, and that you --

24                  VICE CHAIRMAN ROHY:   Commissioner, if I  
25                  can try to help in the -- see if I can interpret

27

1           this better.

2                       Your line of questioning the applicant  
3           has agreed with everything. I think the area  
4           where I understand the applicant has disagreement  
5           is they don't want to be the enforcement agency  
6           for this agreement, is that correct?

7                       MR. GRATAN: That's correct. We don't  
8           want to be the insurer.

9                       VICE CHAIRMAN ROHY: The insurer. Thank  
10          you.

11                      PRESIDING MEMBER MOORE: Okay. All  
12          right, well, just having clarified that then, let  
13          me then go back to procedures and ask, Caryn H-  
14          dot, do you --

15                      MS. HOLMES: Dot-org.

16                      PRESIDING MEMBER MOORE: Dot-org.

17                      (Laughter.)

18                      PRESIDING MEMBER MOORE: Yeah, probably  
19          right. Okay, do you have questions or responses?

20                      MS. HOLMES: I'll provide a brief  
21          response. I didn't prepare an oral argument. I  
22          assume this issue will come up in briefing at a  
23          later date.

24                      First of all, I just wanted to point out  
25          that with regards to facilities that are outside



28

1 the scope of the Commission's regulatory  
2 jurisdiction, the Commission does, as a matter of  
3 course, look at impacts.

4 The example that you're probably most  
5 familiar with is looking at the impacts that could  
6 be associated with any necessity for construction  
7 of downstream transmission facilities.

8 So the Commission has looked at those  
9 kinds of environmental impacts to assure that  
10 there's no impacts occurring as a result of this  
11 project.

12 The Commission's responsibility under  
13 Public Resources Code 21081.6 is to adopt a  
14 reporting or monitoring program that's designed to  
15 insure compliance with the identified conditions.  
16 And it's very hard for me to understand how the  
17 Commission could do that if you have a condition  
18 but nobody's responsible for complying with it.

19 Our concern is that as Mr. Grattan has  
20 pointed out, we do not have -- the Commission does  
21 not have jurisdiction over TCI or any other third  
22 property owner. We need to have some way of  
23 insuring that the conditions that the staff has  
24 recommended and hopefully that the Commission will  
25 adopt, are, in fact, implemented.

29

1           The only lever, hammer, whatever word  
2     you want to use that we have is our licensing  
3     agreement, or a license to the applicant and the  
4     agreements that they make that are a basis of that  
5     decision.

6           So, I think that with respect to one  
7     minor change to the condition that Mr. Grattan  
8     mentioned, I don't think that's a problem for us  
9     at all. But having a condition for which nobody  
10    is responsible, to me doesn't make sense. I don't  
11    see how the Commission can meet its  
12    responsibilities if it allows that to go forward.

13           HEARING OFFICER FAY: I understand your  
14    frustration, but it seems like there's an internal  
15    inconsistency, by the same token, of trying to  
16    create a condition over that which you do not have  
17    jurisdiction. And while doing so, if the  
18    Commission could, would resolve your concern about  
19    loose ends.

20           As I recall, CEQA directs a lead agency  
21    in this situation to recommend to the agency with  
22    jurisdiction that they carry out whatever is  
23    necessary to avoid a significant environmental  
24    impact. And is there such an agency?

25           MS. HOLMES: No, there is no agency

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1       that's going to be doing any additional CEQA work  
2       on this matter.

3               When the issue came up in High Desert,  
4       which was the genesis of this particular  
5       condition, we discussed the issue of jurisdiction  
6       and I realize it's not binding on this Committee  
7       or these parties, but we reached, as between those  
8       parties, an understanding that because we had no  
9       jurisdiction over the third party, the way to  
10      identify or the way to address the adverse impacts  
11      that were associated with activities on that  
12      property was to have the applicant enter into an  
13      agreement that insured their compliance with the  
14      third party.

15             Our concern was that if you had an  
16      agreement for which you could not insure  
17      compliance, one party could choose not to comply  
18      with the conditions, the third party could choose  
19      not to comply with the conditions, and the  
20      Commission would have no way to make sure that the  
21      mitigation that was the basis for their decision  
22      was ever carried out.

23             The other option, of course, is that the  
24      Commission could say that they don't choose to  
25      adopt this kind of a mitigation measure. They

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1       could find it infeasible. And then if the  
2       Commission agreed that there was, in fact, a  
3       potential for a significant environmental impact,  
4       it would be in the situation of requiring an  
5       override in order to have a license.

6               It's staff's position that those really  
7       are the two available options to you, because  
8       there is no subsequent agency that's going to act.  
9       We either have to mitigate any identified impacts  
10      within our process, or we have to be -- we have to  
11      deal with an override situation.

12             HEARING OFFICER FAY: And you think that  
13      following Mr. Grattan's recommendation, that is to  
14      require an enforceable agreement, --

15             PRESIDING MEMBER MOORE: To allow an  
16      enforceable agreement.

17             HEARING OFFICER FAY: Well, to require  
18      as a condition, an enforceable agreement,  
19      enforceable between the two parties, between TCI  
20      and the applicant, would not be adequate, because  
21      the Commission would not be a party to that and  
22      would not be able to enforce it against the  
23      applicant?

24             MS. HOLMES: What we want to be sure is  
25      that in the situation that you're talking about,

32

1 is that the Commission has a condition that says  
2 Sunrise is responsible for enforcing the agreement  
3 as between Sunrise and its sister affiliate with  
4 respect to the mitigation measures.

5 In other words, in the event that TCI or  
6 some successor says, no, we're not going to be  
7 complying with these conditions of certification,  
8 we don't like them. At that point Sunrise has an  
9 obligation to take action to try to enforce the  
10 agreement to insure that the mitigation is, in  
11 fact, implemented.

12 If that link is missing then the  
13 Commission has no way of insuring that the  
14 mitigation measures will ever be implemented.

15 HEARING OFFICER FAY: Now would a  
16 requirement of best efforts go far enough to  
17 satisfy the staff's concerns?

18 MS. HOLMES: That's an option we haven't  
19 considered. Again, the basis for this was the  
20 High Desert agreement in which the third party,  
21 Southwest Gas, said fine, enforceable agreement is  
22 fine with us, and we will be held responsible for  
23 complying with the terms.

24 We had discussed the High Desert  
25 condition with the applicant previously, and I

33

1       guess there was a misunderstanding about whether  
2       or not we were going forward with that kind of  
3       condition or not.

4               As a result it wasn't until earlier this  
5       week we became aware of the fact that they might  
6       be interested in discussing additional  
7       alternatives.

8               But our concern, again, is having that  
9       link so that the Commission has the authority over  
10      Sunrise to say you've got to do something to  
11      enforce these conditions, if, in fact, they're not  
12      implemented.

13              HEARING OFFICER FAY:   Okay.   Well, it  
14      occurs to me, you know, one possibility that might  
15      get us a little closer to closure on this is a  
16      requirement on the applicant of best efforts to  
17      insure that their agreement with TCI is enforced.

18              But I think rather than spend a lot of  
19      time today working on this, we'll refer this to  
20      the briefs.   And in the meantime if the parties  
21      are able to reach some satisfactory arrangement on  
22      this between the staff and the applicant, I  
23      encourage them to try to do so.   Otherwise, it's  
24      just up to the Committee to make the call on this.

25              But it's not an issue that -- it is an

34

1 issue that we have seen before regarding  
2 Commission's contrast between direct jurisdiction  
3 and the authority, as lead agency under CDQA, to  
4 look off and beyond that direct jurisdiction for  
5 analysis purposes, but not to try to exercise  
6 jurisdiction.

7 MS. POOLE: Mr. Fay, may I add one  
8 thing? I agree with what Ms. Holmes raised, but  
9 there's one other aspect to this which hasn't been  
10 discussed.

11 Mr. Grattan pointed out that the  
12 Committee has jurisdiction over thermal hosts in  
13 absent and unusual circumstances. In this case  
14 TCI and the applicant are part of the same  
15 corporation. They're both wholly owned  
16 subsidiaries of Texaco, Inc. And I think that  
17 that situation makes for unusual and compelling  
18 circumstances, which would allow the Commission to  
19 treat the thermal host as part of the project.

20 PRESIDING MEMBER MOORE: I'll take that  
21 as the comments of the intervenors.

22 MR. GRATAN: If I may respond to that  
23 briefly?

24 PRESIDING MEMBER MOORE: Hang on, let  
25 me -- Mr. Grattan, let me come back and make sure

35

1           that Ms. Holmes is done with the staff response.

2                       MS. HOLMES: Unless something new comes  
3 up I'm done with this subject until the brief.

4                       PRESIDING MEMBER MOORE: And the  
5 intervenors are -- that was --

6                       MS. POOLE: That was on behalf of CURE.

7                       PRESIDING MEMBER MOORE: That's on  
8 behalf of CURE. And do you have other comments  
9 that you'd like to make?

10                      MS. POOLE: Not on this topic.

11                      PRESIDING MEMBER MOORE: Okay. Mr.  
12 Grattan.

13                      MR. GRATAN: I'd like to just respond  
14 to the thermal host as not being a related or  
15 appurtenant facility. The Commission has never  
16 once, in my knowledge, never once in its history  
17 found a thermal host to be a related or  
18 appurtenant facility.

19                      My understanding is that when they  
20 consider that they look at the function of the  
21 thermal host. If the thermal host we to provide  
22 the offsets for the power plant; if the thermal  
23 host were providing the fuel for the power plant;  
24 they look at the functional role of that thermal  
25 host, not the fact that it may or may not be a



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1 company within the same families of corporation.

2 And I might add this condition doesn't  
3 care whether it is of the same family or not. It  
4 says TCI and its successors and assigns.

5 Thank you.

6 PRESIDING MEMBER MOORE: Point made. As  
7 Mr. Fay said, we encourage the parties to get  
8 together. If there is an agreement on this  
9 outside, we sure would like to know it at the  
10 earliest convenience.

11 The Committee is prepared to take this  
12 item up and decide it, adjudicate it here at the  
13 Committee level. Thank you.

14 Let's move then to today's topics, and  
15 start with hazardous materials management. The  
16 protocol that we've been using is to turn to the  
17 applicant first and ask for their witness. And I  
18 ask you, Mr. Grattan, do you have a witness today  
19 on this topic?

20 MR. GRATAN: Yes, actually three. Mr.  
21 Galati is going to conduct this.

22 MS. POOLE: May I raise a procedural  
23 issue before we --

24 PRESIDING MEMBER MOORE: Sure.

25 MS. POOLE: -- get to this?

37

1 PRESIDING MEMBER MOORE: Absolutely.

2 MS. POOLE: The applicant addresses  
3 ammonia transportation risk of upset in their  
4 testimony. Staff has not yet addressed that.  
5 They have deferred that to the traffic and  
6 transportation section.

7 So I would suggest that that part of  
8 applicant's testimony and that discussion be held  
9 over until we get staff's testimony and deal with  
10 that in the traffic and transportation hearing.

11 PRESIDING MEMBER MOORE: Well, all  
12 right, I'll ask Mr. Grattan for a response. It  
13 seems logical, although the upshot of it is that  
14 we'd end up hearing it twice. I mean it's not as  
15 if we wouldn't.

16 HEARING OFFICER FAY: Unless they don't  
17 offer it today.

18 PRESIDING MEMBER MOORE: Unless they  
19 don't offer it today, correct. Can I ask the  
20 applicant for a response to that.

21 MR. GALATI: Yes, we are prepared to go  
22 forward today. We have witnesses --

23 PRESIDING MEMBER MOORE: Do you have any  
24 problem holding and submitting that at the time  
25 the staff is ready to submit? Uncombining, as it

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1           were, or unbundling?

2                       MR. GALATI:   What would be the  
3           difficulty is we have assembled a panel of  
4           experts, and some of them from out of town, who  
5           have addressed and worked on the probability  
6           analysis and the traffic analysis at the same  
7           time.   We see them as intertwined.

8                       We'd like to at least get that on the  
9           record.   Our testimony was filed.   The intervenors  
10          and staff at least have an opportunity to see the  
11          small section on ammonia transportation accidents,  
12          and would be free to cross-examine these witnesses  
13          while they're here.

14                      PRESIDING MEMBER MOORE:   And you knew,  
15          though, coming in that staff had put that off till  
16          later?

17                      MR. GALATI:   Well, we actually -- I did  
18          not understand that the transportation of the  
19          ammonia handling, that it was part of ammonia  
20          handling and hazardous materials, so we treated it  
21          all together, since our analysis was performed by  
22          the same people.

23                      MS. POOLE:   That is stated explicitly in  
24          both the PSA and the FSA.

25                      PRESIDING MEMBER MOORE:   Ms. Holmes, can

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1 I ask for your response? I mean how much  
2 difficulty is it for -- you're not prepared to  
3 cross-examine on that topic --

4 MS. HOLMES: I have no cross-examination  
5 for their witness on hazardous materials. Ms.  
6 Poole is correct that we have made this  
7 distinction from the beginning of the case, that  
8 we would be handling transportation-related issues  
9 associated with ammonia transportation in the  
10 traffic and transportation section.

11 PRESIDING MEMBER MOORE: Right. Mr. Fay  
12 has just given me his opinion, which is exactly  
13 coincident with mine, which is that we would let  
14 the testimony continue today. If you've woven a  
15 thread that concerns all the transportation  
16 issues, it seems to me go ahead and present that.

17 On the other hand, it is possible,  
18 perhaps likely, that the topic as cleaved by staff  
19 and by Ms. Poole in their comments just now, will  
20 cause the need for cross-examination of that  
21 particular topic, which will require the presence  
22 of an expert, your witness, later on.

23 It may be that that person will have to  
24 be recalled. I offer you that as in that sense  
25 the opportunity to cross-examine the witness is

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1 going to be made available to staff and to the  
2 intervenors.

3 If that doesn't upset your testimony,  
4 and you have a tale to weave with these three  
5 witnesses, then we'll hear it. But, the area of  
6 transport of ammonia will be then subject to  
7 cross-examination at the time that the staff  
8 report comes up.

9 MR. GRATAN: Thought I would briefly  
10 grab the mike here from my co-counsel. That's  
11 fine with us. My understanding of the -- these  
12 people here today are prepared to address the  
13 general transportation risks that the section  
14 dealing -- the section that the staff has yet to  
15 prepare and submit, deals with the specific risks  
16 over the route of this project --

17 PRESIDING MEMBER MOORE: Well, then  
18 there shouldn't be --

19 MR. GRATAN: -- and accident history.

20 PRESIDING MEMBER MOORE: -- be any  
21 problem. It should be --

22 MR. GRATAN: Shouldn't be a problem.

23 PRESIDING MEMBER MOORE: -- fairly clear  
24 when that topic comes up what we're all talking  
25 to. So with that, Mr. Grattan, your witnesses --

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1 MR. GRATAN: Mr. Galati.

2 PRESIDING MEMBER MOORE: -- Mr. Galati,  
3 and are your witnesses sworn?

4 MR. GALATI: They're not yet sworn.

5 PRESIDING MEMBER MOORE: One at a time?

6 HEARING OFFICER FAY: No, we can swear  
7 the whole panel.

8 PRESIDING MEMBER MOORE: Okay, swear the  
9 whole panel. Sorry.

10 Whereupon,

11 DON MURAOKA, DAVID EINOLF and MICHAEL de la CRUZ  
12 were called as witnesses herein, and after first  
13 having been duly sworn, were examined and  
14 testified as follows:

15 DIRECT EXAMINATION

16 BY MR. GALATI:

17 Q Good afternoon, Mr. Muraoka, would you  
18 please give your name, address and current  
19 employment?

20 A Yes, I'm Don Muraoka. I currently live  
21 in El Dorado Hills, California. And I'm a Senior  
22 Project Manager with Radian, International.

23 Q And, Mr. Einolf, could you give you  
24 name, address and current employment?

25 A My name is David Einolf and I current

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1       reside in Portland, Oregon, and I am Manager of  
2       Pacific Northwest Compliance Services for Dames &  
3       Moore.

4               Q       Mr. de la Cruz?

5               A       My name is Michael de la Cruz. I live  
6       in Rancho Cordova, California. And I'm a Staff  
7       Engineer for Radian, International.

8               Q       Have each of you jointly prepared and  
9       previously submitted written testimony in this AFC  
10      proceeding?

11              MR. MURAOKA: Yes, I prepared the  
12      hazardous materials testimony as part of the  
13      applicant's testimony package.

14              MR. GALATI: And, Mr. Einolf, did you  
15      also previously prepare that same written  
16      testimony?

17              MR. EINOLF: Yes, I did.

18              MR. GALATI: And, Mr. de la Cruz?

19              MR. de la CRUZ: Yes, I did.

20              MR. GALATI: Mr. Muraoka, are you  
21      sponsoring any exhibits at this hearing?

22              MR. MURAOKA: Yes, we're sponsoring  
23      exhibit 1, which is the AFC and revisions,  
24      sections 8.12; exhibit 5, responses to CEC data  
25      requests for responses 36 and 37; exhibit 6,

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1 responses to CURE data request responses 5 through  
2 13 and 88 through 91; exhibit 7 are the Sunrise  
3 comments on the PSA, pages 29 and 30; and finally,  
4 exhibit 22, which is our hazardous materials  
5 portion of the Sunrise written testimony.

6 MR. GALATI: And, Mr. Muraoka, can you  
7 affirm that testimony under oath today?

8 MR. MURAOKA: Yes.

9 MR. GALATI: Mr. Einolf?

10 MR. EINOLF: Yes.

11 MR. GALATI: Mr. de la Cruz?

12 MR. de la CRUZ: Yes.

13 MR. GALATI: Do any of you have any  
14 corrections or modifications to that testimony?

15 MR. MURAOKA: No, I do not.

16 MR. EINOLF: No.

17 MR. de la CRUZ: No, I don't.

18 MR. GALATI: Mr. Muraoka, would you  
19 please give the Committee a summary of your  
20 qualifications?

21 MR. MURAOKA: Yes, as I mentioned, I'm a  
22 senior project manager with Radian International.  
23 I have about 28 years of experience in engineering  
24 and environmental consulting, and also in the  
25 chemical industry.



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1                   Have a BS degree in chemical  
2                   engineering, and was either assisting or  
3                   participating in the preparation of the various  
4                   documents for the Sunrise Project AFC, along with  
5                   data requests and this testimony.

6                   MR. GALATI:   Mr. Einolf, could you  
7                   please give your qualifications?

8                   MR. EINOLF:   I am an environmental  
9                   health and safety consultant with a masters degree  
10                  in biochemistry, certified hazardous materials  
11                  manager, and associate in risk management.

12                  And I've been responsible for the  
13                  development of more than 30 process safety  
14                  management programs for ammonia refrigeration,  
15                  storage, handling and processing facilities.

16                  I've completed more than 40 process  
17                  hazard analyses of anhydrous ammonia systems and  
18                  other hazardous materials handling systems.

19                  I'm a member of the International  
20                  Institute of Ammonia Refrigeration, the  
21                  Refrigerating Engineers and Technicians  
22                  Association, and the American Institute of  
23                  Chemical Engineers.

24                  MR. GALATI:   And, Mr. Einolf, what was  
25                  your role in the project?

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1                   MR. EINOLF: I reviewed the analysis,  
2                   the off-site consequence analysis of the risk  
3                   assessment and formed opinions on the assumptions  
4                   and results of the analysis and its  
5                   conservative --

6                   MR. GALATI: Mr. de laCruz, can you  
7                   briefly summarize your qualifications?

8                   MR. de la CRUZ: Sure. I'm a State of  
9                   California registered professional engineer. Have  
10                  a bachelors degree in chemical engineering. I  
11                  have experience in design engineering and in  
12                  hazardous analysis in many systems, including  
13                  propane, chlorine and anhydrous ammonia.

14                  MR. GALATI: And your role in the  
15                  project?

16                  MR. de la CRUZ: I performed the off-  
17                  site consequence analysis and the probability of  
18                  occurrence calculations.

19                  MR. GALATI: Mr. Muraoka, would you  
20                  please summarize the panel's testimony?

21                  MR. MURAOKA: Yes. As I mentioned I  
22                  supervised and assisted in the preparation of the  
23                  AFC and revisions, responses to CEC and CURE data  
24                  requests, the Sunrise comments on the PSA and  
25                  written testimony pertaining to hazardous

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1 materials for the Sunrise Project.

2 Small quantities of hazardous materials  
3 will be used in the construction and operation of  
4 the Sunrise Project, and will be managed in  
5 accordance with applicable LORS.

6 Anhydrous ammonia will be used for  
7 selective catalytic reduction to control emissions  
8 of nitrogen oxides.

9 It is the only hazardous material that  
10 will be used in quantities that exceed the  
11 reportable amounts under California and federal  
12 laws.

13 The ammonia system will consist of a  
14 5300 gallon tank, and will store approximately  
15 4500 gallons of anhydrous ammonia at pressures of  
16 233 pounds per square inch gauge. This level of  
17 ammonia is consistent with the ASME guidelines to  
18 allow for thermal expansion.

19 The ammonia system will also include a  
20 vaporizer, continuous tank level monitors,  
21 temperature and pressure monitors, alarms, excess  
22 flow valves, check valves, emergency block valves,  
23 a secondary containment and ammonia detectors.

24 In order to evaluate the potential  
25 impact of storing and handling anhydrous ammonia

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1 at the site, we analyzed the following cases: The  
2 worst case scenario involves a catastrophic  
3 release of all of the ammonia in the tank within  
4 ten minutes.

5 The plausible case release scenario  
6 involves the release of ammonia from simultaneous  
7 occurrence of human error and various equipment  
8 failures.

9 And we also evaluated the catastrophic  
10 release of the entire contents of an ammonia  
11 tanker, again within ten minutes, that's involved  
12 in a transportation accident.

13 The analysis of potential impacts must  
14 consider both the probability of a release  
15 occurring, and the consequences if a release were  
16 to occur. And those two things in combination  
17 then can be used to determine the level of  
18 significance.

19 Our worst case analysis was performed in  
20 accordance with federal RMP and State CalARB  
21 programs and determined that the catastrophic  
22 release of the contents of the entire ammonia tank  
23 could produce a 200 ppm area of impact of  
24 approximately 2.9 miles.

25 There are no schools or hospitals,

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1 skilled nursing facilities, daycare centers within  
2 approximately 3.8 miles of the site. However, the  
3 nearest residences are approximately 1.3 miles  
4 east of the site.

5 Taking into account the conservative  
6 meteorological conditions and conservative tank  
7 rupture rates, the probability of the worst case  
8 scenario could occur and result in an impact, and  
9 the direction of the nearest residences is 6.2 in  
10 100 million per year. Or 1.86 in one million over  
11 the project life of 30 years.

12 We also calculated the probability that  
13 the nearest residences may be impacted by a  
14 plausible case scenario. This scenario assumes  
15 that following delivery of anhydrous ammonia to  
16 the site, that the two check valves on the vapor  
17 return line were not closed, and the check valves  
18 on the excess flow valves in the lines  
19 simultaneously fail. The release is then not  
20 stopped for ten minutes.

21 The probability of this plausible  
22 scenario, taking into account, again, conservative  
23 meteorological conditions, is 1.87 in ten million  
24 per year, or again 5.4 in a million over the  
25 project life of 30 years.

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1           Both of these probabilities are based on  
2           very conservative assumptions with regard to wind  
3           direction, atmospheric stability and ambient  
4           temperatures. And in addition the probabilities  
5           will be reduced even further because of the  
6           incorporation into the project of certain design  
7           features to the ammonia tank.

8           The tank will be designed to a standard  
9           seismic zone 4 earthquake forces, which strengthen  
10          the integrity of the tank supports, and lessen the  
11          probability that they will rupture under other  
12          conditions, in addition to earthquakes.

13          The probability of a release is further  
14          reduced by incorporation into the project of  
15          process safety management and employee training,  
16          preparation and implementation of a risk  
17          management plan under RMP.

18          With respect to the transportation  
19          accident, we conducted an analysis incorporating  
20          industry standards and EPA guidance, and  
21          calculated an ammonia tanker truck release  
22          probability of 8.5 in one million per year.

23          However, this probability only addresses  
24          the likelihood of an accident, and not the  
25          probability of an exposure to that accident. The

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1 probability of an exposure would be much less than  
2 the probability of an accident, because again  
3 specific limited meteorological conditions would  
4 need to exist simultaneously with the accident in  
5 order to cause an exposure.

6 We believe that the Sunrise Project, as  
7 currently designed, and with incorporation of the  
8 CEC Staff's proposed conditions of certification,  
9 will comply with all applicable LORS, and  
10 therefore will not cause a significant risk to the  
11 public or the environment.

12 And that concludes my testimony.

13 MR. GALATI: Mr. Einolf, have you read  
14 the final staff assessment?

15 MR. EINOLF: Yes, I have.

16 MR. GALATI: Specifically, have you read  
17 the portion addressing CURE's comments on the PSA?

18 MR. EINOLF: Yes, I have.

19 MR. GALATI: Do you agree with staff's  
20 conclusions?

21 MR. EINOLF: I do.

22 MR. GALATI: The witnesses are tendered  
23 for cross-examination.

24 HEARING OFFICER FAY: Mr. Galati, would  
25 you like to move those portions of the exhibits

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1           noted by Mr. Muraoka into --

2                   MR. GALATI:   Yes, please, we can move  
3           exhibit 22; exhibit 1, section 8.12; exhibit 5,  
4           responses 36 and 37; exhibit 6, responses 5 and 15  
5           and 88 through 91; and exhibit 7, pages 29 through  
6           30 into the record.

7                   HEARING OFFICER FAY:   Any objection.

8                   MS. HOLMES:   No objection.

9                   MS. POOLE:   No objection.

10                  HEARING OFFICER FAY:   So moved.

11                           (The above-referenced documents,  
12                           previously marked Applicant  
13                           exhibits 1, section 8.12; 5, 6 7,  
14                           and 22, were received in evidence.)

15                  HEARING OFFICER FAY:   Ms. Holmes, any  
16           cross-examination?

17                  MS. HOLMES:   I have no cross-examination  
18           of these witnesses.

19                  HEARING OFFICER FAY:   Ms. Poole?

20                  MS. POOLE:   Yes, a couple questions.

21                           CROSS-EXAMINATION

22           BY MS. POOLE:

23                   Q       On page 4 of the testimony, and again  
24           today, you mentioned that secondary containment  
25           will be provided.   Can you describe the secondary



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1           containment structure?

2                       MR. MURAOKA:   That's a bermed  
3           impoundment sized to contain 110 percent of the  
4           tank contents around the base of the ammonia  
5           storage tank.

6                       MS. POOLE:   Will it be --

7                       PRESIDING MEMBER MOORE:   What's it's  
8           constructed of?   I'm sorry, Kate.

9                       MR. MURAOKA:   I believe it's a concrete  
10          structure.

11                      PRESIDING MEMBER MOORE:   Made out of  
12          concrete.

13                      MR. MURAOKA:   Correct, reinforced --

14                      PRESIDING MEMBER MOORE:   Not just a berm  
15          out of dirt, it's --

16                      MR. MURAOKA:   No.

17                      MR. EINOLF:   No, it would be impervious.

18                      PRESIDING MEMBER MOORE:   Sorry, Kate.

19                      MS. POOLE:   Will it be enclosed?

20                      MR. MURAOKA:   No.

21                      MS. POOLE:   What will be the depth?

22                      MR. MURAOKA:   I'm not sure of the  
23          dimensions.

24                      MR. EINOLF:   The dimensions are likely  
25          to be dependent on the detail design, depending on

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1 the size of the footprint needed for the ammonia  
2 tank. There are certain engineering  
3 considerations that should and will be taken into  
4 account regarding the depth and the overall size  
5 of the containment.

6 The containment has to be large enough  
7 to effectively contain the 110 percent, and  
8 additionally to be able to allow employees to  
9 safely work around the tank and in the tank  
10 enclosure.

11 But there's a desire to limit the  
12 overall size of the containment to increase the  
13 possibility that -- to increase the depth of the  
14 pool, because in order to reduce -- to mitigate  
15 potential off-site consequences, you would like to  
16 reduce the -- you'd like to increase the depth of  
17 the pool to reduce evaporation.

18 Because evaporation is a function of  
19 surface area, you want to reduce the surface area  
20 of the tank impoundment.

21 MS. POOLE: Do I understand that you  
22 don't know the dimensions of that containment  
23 structure now?

24 MR. EINOLF: That's part of detail  
25 design.

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1 MS. POOLE: So that won't be determined  
2 until a later date?

3 MR. MURAOKA: I'm not sure if that has  
4 already been developed or not. I'm not aware of  
5 what the dimensions are.

6 MS. POOLE: On page 6 of the testimony  
7 you calculate the probability of a plausible  
8 accidental ammonia release, and state that the  
9 probability was estimated using the following  
10 meteorological conditions.

11 Stability class F, wind speed from zero  
12 to 1.54 meters per second directed toward the  
13 closest off-site receptor.

14 Where is that receptor?

15 MR. MURAOKA: That is the two residences  
16 that are east of the Sunrise Project along Highway  
17 33. Approximately 1.3 miles from the site.

18 HEARING OFFICER FAY: I'm sorry, I  
19 didn't hear that.

20 MR. MURAOKA: About 1.3 miles from the  
21 project.

22 MS. POOLE: The rest of my questions are  
23 transportation related, so if I'll have an  
24 opportunity to present those later?

25 HEARING OFFICER FAY: Well, you're

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1 welcome to ask them now. I'm just thinking in  
2 terms of the record. It's up to you whether you  
3 think they relate to the specific things  
4 identified by staff that staff will be testifying  
5 on, or more general questions, which I understand  
6 is what this panel's prepared to address.

7 MS. POOLE: I think that the questions  
8 will depend on staff's analysis which we haven't  
9 yet seen.

10 PRESIDING MEMBER MOORE: Of course.

11 HEARING OFFICER FAY: Okay.

12 PRESIDING MEMBER MOORE: Are those the  
13 last of your questions?

14 MS. POOLE: Yes.

15 PRESIDING MEMBER MOORE: Okay,  
16 Commissioner Rohy?

17 VICE CHAIRMAN ROHY: I have a couple of  
18 questions, if I may?

19 EXAMINATION

20 VICE CHAIRMAN ROHY: Were all of your  
21 analyses done with anhydrous ammonia rather than  
22 aqueous ammonia?

23 MR. MURAOKA: Yes.

24 VICE CHAIRMAN ROHY: I would ask in your  
25 professional judgment would the answers be

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1 different for probability of plausible  
2 occurrences, rate of release or severity of impact  
3 had you studied an aqueous ammonia rather than  
4 anhydrous ammonia?

5 MR. MURAOKA: I'm going to ask my co-  
6 panelist to try to respond to that.

7 MR. de la CRUZ: The rates of occurrence  
8 would probably be substantially increased with  
9 aqueous ammonia, in that for a number of reasons.

10 First off, we estimate five to six times  
11 more transportation loading and unloadings of  
12 vessels to support the SCR. The fact that  
13 pressure vessels are subject to far more scrutiny  
14 and engineering inspection standards and so forth  
15 than aqueous ammonia, in an unpressurized vessel.

16 The severity of impact, to some extent,  
17 depends on where you are. There are two  
18 dimensions to the severity. One is the distance  
19 of the off-site consequence; and the other is the  
20 potential impact for people who are actually  
21 present on site or around the site.

22 Those who are present on or around the  
23 site would be subject to similar consequences for  
24 release of aqueous ammonia as anhydrous, you know,  
25 from an employee standpoint or from those quite

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1 near. The radius of impact with aqueous ammonia  
2 would be substantially less, that is the distance  
3 from the facility.

4 VICE CHAIRMAN ROHY: You used a number  
5 of 200 ppm, as I recall in your testimony, one of  
6 you did. Is that a level of significance?

7 MR. MURAOKA: That is the ERPG2 values  
8 that are the basis for RMP selection of program  
9 level, or the severity of regulatory program under  
10 the RMP and CalARB programs. So that designates a  
11 value or --

12 MR. EINOLF: The ERPG2 is a guideline  
13 set by the American Institute of -- American  
14 Industrial Hygiene Association. It's called, ERPG  
15 stands for emergency response planning guidelines.

16 The ERPG2 was selected on a consensus  
17 basis during rulemaking by the USEPA as something  
18 that they could get the organizations that were  
19 litigating against this regulation to agree upon.  
20 And those were the ammonia, International  
21 Institute of Ammonia Refrigeration and the  
22 Fertilizer Institute, the two primary users of  
23 anhydrous ammonia in the United States.

24 Those numbers represent a number at  
25 which the general public, that includes the

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1 elderly, children, it is not a standard based on  
2 able bodies males; that number is slightly  
3 higher -- at which they could, and could is an  
4 important word here, suffer irreversible illness  
5 or damage after a 60-minute exposure. So a one-  
6 hour exposure to ammonia at that level.

7 PRESIDING MEMBER MOORE: I have no  
8 questions.

9 Shawn.

10 MR. PITTARD: Yes. Mr. Muraoka, you  
11 mentioned that there are two parts of your  
12 analysis, you consider the probability and the  
13 consequences.

14 I saw that on the consequences side the  
15 ppm associated with the release were well over  
16 that 200 ppm, but were 1500 ppm, is that -- do I  
17 understand that correctly?

18 MR. MURAOKA: I'm not sure what you're  
19 referring to there.

20 MR. PITTARD: When we looked at the  
21 consequences of the release, and when you did your  
22 off-site, what's called your off-site exposure  
23 analysis, the actual values were much higher than  
24 200 ppm, but in fact were near 1500 ppm. Do I  
25 understand that correctly?

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1                   MR. MURAOKA:   That would be off site  
2                   from the plant site.

3                   MR. PITTARD:   My question or concern  
4                   goes to the residents at State Route 33.

5                   MR. MURAOKA:   Yes.

6                   MR. PITTARD:   And what the exposure to  
7                   them would be.

8                   MR. MURAOKA:   And what the ppm level  
9                   would be at --

10                  MR. PITTARD:   Correct.

11                  MR. MURAOKA:   -- at that location?

12                  MR. PITTARD:   Yes.

13                  MR. MURAOKA:   For the worst case, or for  
14                  the plausible?

15                  MR. PITTARD:   Both cases if you have the  
16                  numbers there.

17                  MR. MURAOKA:   Michael, do you have that  
18                  information?

19                  Approximately 1.3 miles.

20                  MR. EINOLF:    Just to respond -- to  
21                  respond to your question, there's a difference  
22                  between the instantaneous concentration of the  
23                  release at the point of release, and the measure  
24                  to what we would say extinction.

25                  The numbers that we provided were



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1 numbers to extinction at 200 ppm judged in  
2 distance.

3 So in the worst case scenario with a  
4 distance to extinction of 2.8 miles, I believe 2.8  
5 miles to extinction, then the residents would be  
6 subject to a higher concentration .

7 That has been modeled. However, I don't  
8 know if that's part of the output that we  
9 generated for this testimony. I don't believe it  
10 is.

11 MR. MURAOKA: It's not.

12 MR. PITTARD: Maybe staff's witness will  
13 be able to answer that. Because my --

14 MR. MURAOKA: The way that the model  
15 runs is that the concentration of interest in this  
16 case, the 200 ppm, is entered and then that gives  
17 you the distance at which that circle appears in  
18 the modeling.

19 MR. PITTARD: Okay, and you'd mentioned  
20 that there -- you talked about the sensitive  
21 subgroups of the population that may be exposed.  
22 You said there were no residents' homes within  
23 that distance, but do you know whether or not the  
24 residents at State Route 33 might be in any  
25 particular sensitive subgroup?

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1 MR. MURAOKA: No, we don't know who  
2 lives in those two houses that are there.

3 MR. PITTARD: Okay, so the persons that  
4 live at State Route 33 didn't participate in the  
5 process? They didn't make any comments on this,  
6 didn't participate in this public proceeding?

7 MR. MURAOKA: Not that I'm aware of.

8 MR. PITTARD: Okay. That's all the  
9 questions that I have.

10 PRESIDING MEMBER MOORE: Commissioner  
11 Rohy.

12 VICE CHAIRMAN ROHY: I'd like to follow  
13 up with the line of questioning that's going on.

14 Let's go back to those houses that Mr.  
15 Pittard was talking about. If you had aqueous  
16 ammonia, would they fall within the 200 ppm circle  
17 or not?

18 MR. EINOLF: I can't comment without  
19 reviewing a model.

20 PRESIDING MEMBER MOORE: Well, as a  
21 general rule, to answer Dr. Rohy's question, would  
22 aqueous have a smaller radius than --

23 MR. EINOLF: Yes.

24 PRESIDING MEMBER MOORE: -- pound for  
25 pound have a smaller radius, so the answer is --

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1 VICE CHAIRMAN ROHY: Possibly.

2 PRESIDING MEMBER MOORE: -- possibly  
3 depending on where those houses are that would  
4 fall outside the circle at that level for aqueous?

5 VICE CHAIRMAN ROHY: But currently with  
6 anhydrous they're within the 200 ppm radius?

7 MR. EINOLF: They're within the 200 ppm  
8 radius of the model worst case scenario.

9 VICE CHAIRMAN ROHY: Thank you.

10 MS. POOLE: Mr. Fay -- oh, excuse me.

11 HEARING OFFICER FAY: Sure, back to  
12 Kate.

13 MS. POOLE: May I ask one follow-up?

14 RECROSS-EXAMINATION

15 BY MS. POOLE:

16 Q Does the federal RMP analysis include a  
17 probability analysis?

18 MR. EINOLF: No. The federal RMP has no  
19 probability nature.

20 MS. POOLE: Thank you.

21 PRESIDING MEMBER MOORE: Mr. Fay.

22 EXAMINATION - Resumed

23 HEARING OFFICER FAY: The closest  
24 receptors you indicated are 1.3 miles from the  
25 project. Are these the residences on State Route?

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1                   MR. MURAOKA:   33, they're the two houses  
2                   that are along State Route 33.

3                   HEARING OFFICER FAY:   I also -- I wanted  
4                   to explore what your basis was for the statement  
5                   on page 8 of your testimony that ammonia tankers  
6                   typically do not operate full.

7                   MR. EINOLF:   There's two -- first off, a  
8                   capacity of an ammonia vessel is determined not by  
9                   its actual size, but by its appropriate working  
10                  volume.

11                  It's a gas -- ammonia is a compressed  
12                  gas, and is brought into a liquid state, as with  
13                  natural gas, and is usually maintained at roughly  
14                  85 percent of the liquid capacity of a tank.  
15                  That's the first reason.

16                  Second is that tankers are generally  
17                  filled to the order of capacity of the group, so  
18                  if you were, for example, bringing in 10,000  
19                  gallon -- using a 10,000 gallon tanker to fill  
20                  4500 gallon vessel, 4500 gallons would be  
21                  delivered.

22                  The ammonia suppliers do not like  
23                  traveling around highways with excess material any  
24                  more than anyone else.

25                  PRESIDING MEMBER MOORE:   So does that

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1        imply that they'll pick the next best fit for a  
2        vehicle? In other words, if there were 5000  
3        gallon tankers around and you had to deliver 4500  
4        gallons, you'd pick the 5000 gallon tanker, you  
5        wouldn't pick the 10,000 gallon tanker and have  
6        just that much extra freeboard?

7                MR. EINOLF: That's correct.

8                PRESIDING MEMBER MOORE: I mean there's  
9        some fit argument here, as well?

10               MR. EINOLF: Yes.

11               PRESIDING MEMBER MOORE: Because if you  
12        were going to -- if the only thing around was  
13        10,000 gallon tankers and every order was 4500  
14        gallons, then the likelihood is they'd probably  
15        break the rule and go for two deliveries, as  
16        opposed to deadheading back with one empty truck  
17        in the middle?

18               MR. EINOLF: That is correct, but again,  
19        there are a limited -- I would say a limited  
20        number of facilities that would take ammonia in  
21        this fashion.

22               PRESIDING MEMBER MOORE: Thanks.

23               HEARING OFFICER FAY: Now, you made the  
24        selection of anhydrous ammonia, I assume, for  
25        economic reasons and because you thought the risks

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1           were low enough to justify the use of anhydrous.

2                       Are there some considerations in the use  
3 of aqueous ammonia that are not in favor of the  
4 safety side of the equation?

5                       One thing that I heard you mention was  
6 the need for multiple deliveries, because of the  
7 greater volume. Is that actually an increased  
8 risk factor that --

9                       MR. EINOLF: There are two components  
10 that increase overall risk to the population. One  
11 is an increase in deliveries. And the second is  
12 the increased risk to facility employees in  
13 handling aqueous ammonia.

14                      In two of the last three recorded years,  
15 '96, '97 and '98, there have been more  
16 transportation incidents involving -- an incident  
17 meaning a vehicle that carried this material  
18 actually getting into a traffic-related accident,  
19 whether or not a hazardous material was spilled.  
20 There have been more instances involving aqueous  
21 ammonia than there have been involving anhydrous  
22 ammonia.

23                      Secondly, in a manufacturing facility  
24 that uses aqueous ammonia, that compound -- it's  
25 liquid, it's pumped, it may actually be operating

66

1 under a higher hydrostatic pressure, I'm not sure  
2 of the design of this particular facility, but it  
3 may have to operate under a higher hydrostatic  
4 pressure than anhydrous ammonia, and may cause the  
5 hydrostatic -- a danger from hydrostatic release.

6 And it's just -- the proximal effects,  
7 that is the effects on individuals working in a  
8 facility are just as substantial for aqueous  
9 ammonia as it is for anhydrous.

10 HEARING OFFICER FAY: So do you have an  
11 overall impression, just from a safety point of  
12 view, not from an economics point of view, would  
13 aqueous ammonia necessarily reduce the risks of  
14 ammonia exposure at this facility, both on the  
15 facility and outside the facility?

16 MR. EINOLF: I do not believe that  
17 aqueous ammonia would reduce the on-site risks.  
18 Certainly because of its -- it's not as volatile  
19 and it does not have as large an area of  
20 influence. It would decrease the potential circle  
21 of influence.

22 I've not done the probablistic analysis  
23 to determine whether or not accidents, ruptures,  
24 so forth, with nonpressurized vessels occur on a  
25 greater or lesser frequency, and how those might

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1           affect it. I've not done the model.

2                       HEARING OFFICER FAY: And can you  
3           summarize the passive restraints or constraints to  
4           a release that you propose to build into the  
5           project?

6                       MR. ELLISON: First and foremost, the  
7           worst case scenario, as requested by the USEPA,  
8           and from a regulatory standpoint, the reason the  
9           risk management program, the RMP and its -- in  
10          California, the CalARB program were designed was  
11          to create a level playing field. That is you want  
12          to make it as easy as possible for -- they  
13          estimate at 66,000 facilities needed to comply  
14          with this rule -- they wanted to make it as easy  
15          for everyone to comply with the rule as possible.

16                      The worst case scenario was the complete  
17          rupture and complete release of a tank over a ten-  
18          minute period. Given that we're going to have it,  
19          it's good management practice, it's good  
20          engineering practice, is to have a secondary  
21          containment area. That's thermodynamically  
22          impossible.

23                      You will fill that containment area with  
24          a pool of ammonia at 28 degrees below zero  
25          Fahrenheit and it will evaporate at that pool



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1 level dependent on the ambient temperature.

2 There's no way that stuff is -- pools of  
3 anhydrous ammonia, it has such a high latent heat  
4 evaporation that pools of anhydrous ammonia have  
5 great staying power. They will continue to evolve  
6 ammonia gas for a considerable period of time.  
7 And allow -- and can be recovered. This is  
8 experience from broken valves and other situations  
9 and controlled releases.

10 So the worst case, as we looked at it,  
11 is much more conservative than the -- first off,  
12 the first bit of passive mitigation of any  
13 potential off-site consequences, which was to  
14 complete rupture.

15 In terms of potential mitigating  
16 measures for plausible scenarios or for normal,  
17 what I would consider excursions which might occur  
18 during normal working conditions, first and  
19 foremost, these pressure vessels are stamped and  
20 built in accordance with ASME, American Society  
21 for Mechanical Engineering pressure vessel  
22 codes.

23 And they're very specific requirements  
24 for the size and type of steel used in building  
25 them; the type of welds that can be made; how

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1       those welds need to be tempered and handled. And  
2       what types of inspections the equipment need to  
3       have as they're installed.

4               The vessel will have pressure relief  
5       valves set well below the design pressure of the  
6       equipment, approximately 10 percent below the  
7       design pressure of the equipment, and well below,  
8       probably 100 percent below the tested pressure,  
9       the hydrostatic test prior to shipment.

10              The pressure relief valves are designed  
11     basically to handle a situation in which slightly  
12     greater than normal amount of outside heat, say  
13     from a small fire, not a complete engulfment in  
14     fire, but a small fire, or I should say  
15     substantial fire, not immense, but a substantial  
16     fire on the tank. And size carry a lot of -- a  
17     substantial amount of vapor. There are specific  
18     calculations which I'm not prepared to go into  
19     that go into sizing those valves.

20              The vessel is also required in ASME  
21     piping code and in American National Standards  
22     Institute requirements for installation of ammonia  
23     vessels, and also title 8 of the California Code  
24     of Regulations, section 501, to have very specific  
25     piping requirements.

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1                   In this particular case check valves and  
2                   excess flow valves. So that basically you're  
3                   now -- the ammonia, once it's in, is not going to  
4                   go backwards unless you provide a motive force and  
5                   positively insure that it's going to go in the  
6                   direction that you want it to go.

7                   And in the case of an excess flow valve,  
8                   if there is a rupture or break, once flow passes  
9                   the level at which you've designed the operation  
10                  to work and feed the SCR unit, it will stop  
11                  ammonia from traveling past those point at that  
12                  rate.

13                  Generally speaking, those are very close  
14                  to the tank, so that they cannot be sheared off,  
15                  broken, mangled, whatever. They are only subject  
16                  to physical malfunction, which is the conservative  
17                  numbers that we used are based on the physical  
18                  malfunction of excess flow valves and check  
19                  valves.

20                  The facility will have ammonia detection  
21                  equipment in place which will be set at  
22                  sensitivities protective of employee welfare.  
23                  When we set it -- it's set at the permissible  
24                  exposure limit under OSHA, so that employees are  
25                  not exposed, which is far below the levels which

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1           would be experienced in a tank rupture.    So  
2           they'll be available for indication.

3                       I can't think of any other measures --

4                       MR. de la CRUZ:   No, that's about it.

5                       MR. EINOLF:    Yeah.

6                       HEARING OFFICER FAY:   All right, thank  
7           you.   And do you agree with the conditions of  
8           certification proposed by the staff in their  
9           testimony?

10                      MR. MURAOKA:   Yes.

11                      MR. EINOLF:    Yes, we do.

12                      MR. de la CRUZ:   I do.

13                      MR. EINOLF:    I think in one of the  
14           conditions of certification, speaking as someone  
15           who's done quite a lot of work in process safety  
16           management, process safety management and the  
17           adherence to a process safety management program  
18           is a prudent mitigation measure in and of itself.

19                      It requires attention to the operation  
20           of the system, and attention to the operation of  
21           the safety equipment, and the design of that  
22           equipment.   That is not likely -- would not  
23           necessarily be included in an aqueous ammonia  
24           system.

25                      HEARING OFFICER FAY:   Thank you.   Any

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1           redirect, Mr. Galati?

2                       MR. GALATI:   Just have a couple of quick  
3           questions.

4                               REDIRECT EXAMINATION

5           BY MR. GALATI:

6               Q       Your modeling, did it model also the  
7           worst case and plausible case scenario concerning  
8           utilizing prevailing wind conditions?

9                       MR. de la CRUZ:   Yes.

10                      MR. GALATI:   So that would represent the  
11           highest probability of occurrence in dispersion?

12                      MR. de la CRUZ:   Yes.

13                      MR. GALATI:   I have no further  
14           questions.

15                      HEARING OFFICER FAY:   Any recross within  
16           the scope of redirect?

17                      MS. POOLE:   No questions.

18                      PRESIDING MEMBER MOORE:   Okay, let's  
19           move to land use.

20                      HEARING OFFICER FAY:   We have to hear  
21           from the staff first.

22                      PRESIDING MEMBER MOORE:   I'm sorry.

23                               (Laughter.)

24                      PRESIDING MEMBER MOORE:   I went right  
25           past it, I'm sorry.   I'm not tuned in, today.

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1 Ms. Holmes, excuse me.

2 MS. HOLMES: Thank you. Staff's witness  
3 on hazardous materials management is Rick Tyler  
4 and he needs to be sworn.

5 Whereupon,

6 RICK TYLER

7 was called as a witness herein, and after first  
8 having been duly sworn, was examined and testified  
9 as follows:

10 MS. HOLMES: We have a bit of additional  
11 procedural matters to take care of. Mr. Tyler has  
12 just informed me that both his r, sum, and appendix  
13 B were not included in exhibit 23. So I think we  
14 are going to need to have those marked as  
15 additional exhibit numbers.

16 HEARING OFFICER FAY: Any objection?  
17 Marking those --

18 MS. POOLE: Do we have copies of those?  
19 I don't know what appendix B is.

20 HEARING OFFICER FAY: -- next exhibit in  
21 order, exhibit 29. Actually be exhibit 30.

22 MS. HOLMES: I'm sorry, I missed that.  
23 Which one is which?

24 HEARING OFFICER FAY: Oh, you have two  
25 exhibits you're offering?

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1 MS. HOLMES: One is Mr. Tyler's r, sum  
2 and the other is appendix B.

3 HEARING OFFICER FAY: Okay.

4 MR. TYLER: Appendix B is listed in one  
5 of the conditions, so it's there.

6 HEARING OFFICER FAY: All right, let's  
7 designate Mr. Tyler's r, sum, as exhibit 30. And  
8 appendix B as exhibit 31.

9 (The above-referenced documents  
10 were marked CEC Staff exhibits 30  
11 and 31 for identification.)

12 MS. HOLMES: For identification purposes  
13 appendix B is a table, it's got the number on the  
14 table 8.12-2. Hazardous materials used during  
15 operation. And exhibit 30 is entitled r, sum, of  
16 Rick Tyler, Associate Mechanical Engineer, and  
17 lists his education and experience.

18 HEARING OFFICER FAY: All right, go  
19 ahead.

20 MS. HOLMES: Thank you.

21 DIRECT EXAMINATION

22 BY MS. HOLMES:

23 Q Mr. Tyler, did you prepare the hazardous  
24 materials management testimony contained in  
25 exhibit 23 which is the final staff assessment?

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1           A       Yes, I did.

2           Q       And did you also prepare what has just  
3 been identified as exhibit 31 and exhibit 30?

4           A       Yes, I did.

5           Q       Do you have any changes or corrections  
6 to any of these exhibits?

7           A       Yes, I have one minor correction to make  
8 in the final staff assessment on page 31 in the  
9 second paragraph about midway down, right below  
10 the 100 percent, where it says hydrostatic testing  
11 of the tank after construction, and then and  
12 periodic testing of the tank life.

13                   I need to remove the words and periodic  
14 testing of the tank life. And the reason for that  
15 is that that code does not require that.

16           Q       Does this change affect the conclusions  
17 that you reached in your testimony?

18           A       It does not.

19           Q       So with that correction, are the facts  
20 contained in your testimony true and correct?

21           A       Yes, they are.

22           Q       And do the opinions contained in the  
23 testimony represent your best professional  
24 judgment?

25           A       Yes, they do.



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1 MS. HOLMES: Mr. Tyler is available for  
2 cross-examination.

3 HEARING OFFICER FAY: Before we go to  
4 cross would you like to request that --

5 MS. HOLMES: Move that portion of  
6 exhibit 23 into the record, thank you.

7 HEARING OFFICER FAY: Any objection?  
8 All right, so moved.

9 (The above-referenced document,  
10 previously marked CEC Staff exhibit  
11 23, section, was received in  
12 evidence.)

13 HEARING OFFICER FAY: And do the parties  
14 feel the need to, it is a bit late, but do the  
15 parties feel the need of voir dire, since they did  
16 not have the advantage of Mr. Tyler's r, sum, in  
17 advance?

18 MR. GALATI: No, we'll stipulate to Mr.  
19 Tyler's qualifications.

20 HEARING OFFICER FAY: All right, fine.  
21 Mr. Galati.

22 MR. GALATI: No cross-examination.

23 HEARING OFFICER FAY: All right. Ms.  
24 Poole.

25 MS. POOLE: Couple quick questions.

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1

CROSS-EXAMINATION

2

BY MS. POOLE:

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7

Q Mr. Tyler, on the bottom of page 29 and the top of page 30 of the FSA, you calculate the probability of a worst case ammonia accident by, as I understand it, multiplying two numbers together.

8

9

10

The first number is one in 100,000 based on the failure rate for the proposed ammonia tank, correct?

11

A Um-hum.

12

13

14

15

16

Q And the second number is .2 percent, which is based on the probability that the wind will blow the direction the closest residence on Highway 33 at the same time that certain meteorological conditions are met, correct?

17

A That's correct.

18

19

Q Then you multiplied those two numbers together to get the probability?

20

21

22

23

A That's correct, except you have to convert the .2 to .02 in order to do that, because it's a percentage, so you have to have the absolute number.

24

Q Point 0-0-2, then, right?

25

A No, I believe point 0-2 is the -- 2

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1 percent is .02, is equivalent to .02.

2 No, .2 percent, you're correct, .002,  
3 I'm sorry. You're correct, .002.

4 Q And on page 28 of the FSA you state at  
5 the bottom of the last paragraph, if the exposure  
6 associated with the potential release would exceed  
7 75 ppm at any public receptor, staff will presume  
8 that the potential release causes a risk of  
9 significant impact.

10 However, staff may also assess the  
11 probability of occurrence of the release and/or  
12 the nature of the potentially exposed population.

13 What probability of release does staff  
14 consider significant?

15 A There is no specific probability of  
16 significance that I would use universally. What I  
17 would say is it's a matter of judgment, depending  
18 on the number of potentially exposed individuals  
19 and the type of individuals that might potentially  
20 be exposed.

21 So, it would depend on the extent of the  
22 potential injuries and impact on the public and  
23 who might be exposed as to what level I would make  
24 the judgment call that it's a significant impact,  
25 based on the probabilities.

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1           Q       Given the specific conditions in this  
2 case, what would you consider to be the  
3 significant threshold here?

4           A       What I can say is based on other  
5 regulatory decisions that I would rely on, the  
6 AICHE, and I provided that reference in response  
7 to your comments, provides a table that was  
8 developed by the Safety Commission in the United  
9 Kingdom, and I believe that's probably a pretty  
10 good judgment call, it's probably one I would rely  
11 on.

12                   At one, in ten to the negative 6 risk  
13 they would consider it tolerable up to 100  
14 fatalities. If I go between the risk of 10 to the  
15 negative 6 on upward to a risk of ten to the  
16 negative 5, that would go up to 10,000 fatalities.

17                   And basically in that gray area they  
18 would say improved to as low as reasonably  
19 practical. I believe that in other words if I  
20 found that I was concerned with the probabilities  
21 of release, then I would recommend mitigation to  
22 reduce it to the extent reasonable.

23                   But in this case the facts are that  
24 there's very low population in the area, and  
25 extremely low likelihood that the winds would blow

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1 in the direction of those receptors in the event  
2 of the worst plausible release, which in and of  
3 itself, is not plausible, in my opinion.

4 So the number of one in a million that I  
5 would use to basically consider whether I needed  
6 to pursue further mitigation is a de minimis  
7 level. In other words, below that it's just  
8 categorically too low to be considered plausible.

9 So in this case I would say that perhaps  
10 a risk as high as ten to the negative 5th, ten to  
11 the negative 4th may be acceptable in light of the  
12 low population density and the probabilities.

13 Q So that is one in ten to the negative  
14 5th, or one in ten to the negative 4th?

15 A Right.

16 VICE CHAIRMAN ROHY: Excuse me, just for  
17 clarification that's the probability of an  
18 occurrence?

19 MR. TYLER: Yes.

20 VICE CHAIRMAN ROHY: Thank you.

21 PRESIDING MEMBER MOORE: Right, except  
22 the range on that, that's an order of magnitude  
23 range. Ten to the negative 4th all the way out to  
24 ten to the negative 5th, I mean all the way within  
25 that? I mean why wouldn't you simply say ten to

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1 the negative 4, and use that as your threshold.  
2 Why are you defining a range that's that big?

3 MR. TYLER: She's basically asking me a  
4 question about this specific situation, which I  
5 haven't really, quite frankly, thought about.

6 But with the potential of two affected  
7 residences and a probability of winds blowing in  
8 that direction of .2 percent, and with an  
9 extremely unplausible event of a catastrophic or  
10 spontaneous tank failure, I am saying that I  
11 certainly would not impose 10 to the negative 6th  
12 over the life of the project as significant.

13 PRESIDING MEMBER MOORE: Okay, but I'm  
14 just saying, fine, you've established a limit, but  
15 I wasn't understanding the range. I mean I  
16 understand when you get that low a probability, in  
17 a sense it's not vanishingly small, but if it  
18 isn't it's very close to it.

19 So one vanishingly small number is not  
20 significantly different than another vanishingly  
21 small number.

22 MR. TYLER: Well, the table that I just  
23 talked about, which is in my testimony, defines a  
24 risk of one times ten to the negative 4th for one  
25 fatality. And one times ten to the negative 6th

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1 for up to 100 fatalities.

2 That's the bottomline of where they  
3 would start considering mitigation.

4 PRESIDING MEMBER MOORE: Okay, I --

5 MR. TYLER: I don't really take too much  
6 exception with that point of view.

7 PRESIDING MEMBER MOORE: Sure. All  
8 right, well, then you've answered, I think, my  
9 question and her question simultaneously.

10 Ms. Poole, do you have other questions?

11 MS. POOLE: That's it, thank you.

12 PRESIDING MEMBER MOORE: Let me turn to  
13 the applicants and ask if you have cross-  
14 examination of the witness.

15 MR. GALATI: No, no cross-examination.  
16 And we concur with the minor errata.

17 PRESIDING MEMBER MOORE: Shawn.

18 EXAMINATION

19 MR. PITTARD: Rick, I'd like to ask you  
20 the questions that I asked of the applicant.  
21 Again, do you know who lives in those residences  
22 at State Route 33, because you talked about  
23 depending upon who is, you know, possibly at risk.  
24 It changes your decision or your determination on  
25 what's significant. Can you tell me who lives

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1           there?

2                       MR. TYLER:   No, I can't.   I would say  
3           that they're public receptors, they could be  
4           elderly, they could potentially be sensitive  
5           receptors.   But I guess what I'd be looking for is  
6           more in line something like a hospital or daycare  
7           center where I had large populations of assuredly  
8           people in that condition.

9                       MR. PITTARD:   What if you had a person  
10          on a respirator living in a house, a senior  
11          citizen?

12                      MR. TYLER:   At the kind of  
13          concentrations that we would see in a catastrophic  
14          failure with winds blowing in that direction, it  
15          really wouldn't matter.   Because even if they were  
16          adult healthy individuals, they would be in  
17          serious trouble.

18                      MR. PITTARD:   Okay, so they'd be in more  
19          serious trouble --

20                      MR. TYLER:   Yes.   I estimated, and  
21          that's where I believe you came up with 1500 ppm,  
22          that was my estimation.   There really wasn't  
23          modeling to drive it, but you can linearly,  
24          somewhat linearly extrapolate.

25                      And I made a rough estimate that 1500



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1 ppm would be the number at those locations.

2 MR. PITTARD: Okay, so in your testimony  
3 at 28 you say that, what is it, 2000 ppm is  
4 lethal?

5 MR. TYLER: Yes.

6 MR. PITTARD: And this is at 1500 ppm?

7 MR. TYLER: That's correct.

8 MR. PITTARD: At a residence, and you  
9 don't know if they're a sensitive subgroup?

10 MR. TYLER: What I'm saying is at 1500  
11 ppm even if they were healthy they'd be in serious  
12 trouble. The IDLH level is 300 ppm. And 300 ppm,  
13 immediately dangerous to life and health.

14 So in other words that's a level where  
15 in an industrial setting you would not allow a  
16 person to enter an area with a concentration  
17 without self-contained breathing apparatus.

18 So that gives you an idea of -- and I'm  
19 not arguing that. In the case of a worst case  
20 release with F stability, with winds directly  
21 toward the residence, there would be serious  
22 consequences to anyone in that immediate area.

23 MR. PITTARD: And those persons didn't  
24 participate in the process?

25 MR. TYLER: I've seen --

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1                   MR. PITTARD:   You didn't hear from them  
2                   or do you know if they were notified?

3                   MR. TYLER:    I don't know if they were  
4                   notified.

5                   MR. PITTARD:   Do you think, you know,  
6                   that like professionals who do risk analysis like  
7                   you do, have sometimes a very different perception  
8                   of what a risk is compared to the person who might  
9                   actually be exposed to a release?   Had people  
10                  participated and expressed their concern, would  
11                  you have come to any different conclusion than you  
12                  came to?

13                  MR. TYLER:    I would have considered any  
14                  comments they made.   I don't really believe I  
15                  would have come to a different conclusion because  
16                  my belief is that the plausibility of occurrence  
17                  of this level of an accident is just not  
18                  reasonable.   It's similar to being struck by  
19                  lightning.   So it's just not reasonable to assume  
20                  it's going to occur.

21                  MR. PITTARD:   But people do get struck  
22                  by lightning.

23                  MR. TYLER:    But people do, that's  
24                  correct.   And they may take it in a much  
25                  different   --

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1                   MR. PITTARD:   Yes.   And when you say  
2   plausible, these witnesses used a very specific  
3   definition of a plausible release.   So when you  
4   say it's not plausible are you really saying it's  
5   not probable versus implausible?

6                   MR. TYLER:   Basically I would tie that  
7   statement directly to what I use a sa de minimis  
8   criteria for risk, or for probability of  
9   occurrence, which is one in a million.

10                  Below one in a million the risk, it's so  
11   small that I have to consider it implausible or  
12   universally insignificant.

13                  MR. PITTARD:   So ultimately the decision  
14   is really made on the probability of the upset or  
15   the failure of the vessel, is that right, where  
16   that led you to de minimis that's so low, that the  
17   other side didn't really matter?

18                  MR. TYLER:   I think there are gradations  
19   here.   Keep in mind that we looked at other  
20   scenarios.   Generally what happens, and if you  
21   look at the record of releases and tank failures  
22   and other types of accidental releases, what you  
23   find is huge consequences result from assuming  
24   catastrophic failure of the tank.   However, that's  
25   a very low probability.

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1                   Lower consequences result from shearing  
2                   off a hose and having the excess flow valve fail.  
3                   That's exactly consistent with the modeling that  
4                   was done. And that's consistent with the reality  
5                   of what really happens.

6                   So what I guess I'm saying is there are  
7                   other scenarios. Had there been people closer  
8                   where those other more likely scenarios were  
9                   brought into question, risk to the public, then I  
10                  very well may have made a different conclusion.

11                  MR. PITTARD: Good, thank you.

12                  PRESIDING MEMBER MOORE: Mr. Fay.

13                  HEARING OFFICER FAY: Mr. Tyler, did you  
14                  review the applicant's analysis?

15                  MR. TYLER: Yes, I did.

16                  HEARING OFFICER FAY: And did you agree  
17                  with the analysis they provided and with their  
18                  calculation of risk and consequences?

19                  MR. TYLER: Yes, they provided a  
20                  discussion of the modeling they used. They used  
21                  very conservative assumptions, those that are  
22                  recommended by the Environmental Protection  
23                  Agency. They used a denser-than-air model which  
24                  is appropriate for this type of release, because,  
25                  in fact, when you release anhydrous ammonia

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1 usually what you end up with is a jet type  
2 release, much like an aerosol can.

3 And what happens is those little aerosol  
4 fragments autorefrigerate, and the plume and the  
5 surrounding air become denser. And as a result of  
6 that, the plume does what's called slumping. And  
7 it goes directly to the ground.

8 They used a model that reflects all of  
9 those types of phenomena. They assumed virtually  
10 no winds, and very high atmospheric stability,  
11 which are almost an oxymoron. They don't --  
12 that's very difficult to -- there's very few  
13 circumstances where that occurs.

14 So, yes, I do agree with the modeling  
15 approach they took and the results that they  
16 obtained.

17 HEARING OFFICER FAY: And in the worse  
18 case analysis that you used, did you also make the  
19 assumptions -- I heard one of the witnesses say  
20 it's essentially thermodynamically impossible,  
21 that is for the off-gassing to occur in ten  
22 minutes, and in the context of a catastrophic  
23 failure, because of the secondary containment  
24 could not really --

25 MR. TYLER: What really happens, in my

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1 opinion, is actually the two failures that have  
2 occurred that all these statistics are based on,  
3 were weld failures, were caused by what would be  
4 now considered inappropriate under code, but at  
5 the time wasn't recognized, were caused by brittle  
6 fracture on the end bells of the tank. And in  
7 fact, most of the contents did go out.

8 When you have a situation like that  
9 where you have a large hole in the tank, none of  
10 it may end up in the containment, because of the  
11 driving force -- keep in mind, the tank's at 200  
12 psi. When you open a hole in it, you have a  
13 considerable driving force, you have material  
14 expelled from the tank at high rates and high  
15 velocities.

16 So, under those circumstances it's not  
17 necessarily 100 percent likely that the material  
18 is just going to drop into the space. And that's  
19 part of the reason that there's differences  
20 between what staff does on aqueous ammonia, where  
21 we have catchment basins outside, is because in  
22 the case of anhydrous ammonia, they won't do a  
23 whole lot of good, anyway, because of how the  
24 releases actually occur.

25 HEARING OFFICER FAY: And what were the

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1 primary factors for you not recommending the use  
2 of aqueous ammonia as a mitigation in this case?

3 MR. TYLER: The residences are a very  
4 large distance away; the prevailing meteorology  
5 suggests that virtually the conditions that would  
6 result in significant impacts are highly  
7 improbable.

8 Furthermore, the tank failure scenario  
9 that's being postulated is, in my opinion, very  
10 very low, to the point of almost being implausible  
11 in and of itself.

12 I would point out also that the  
13 statistics are based on vessels in ages ranging  
14 back in time. The two failures that have occurred  
15 that were used to drive most of these statistics,  
16 the causes of those failures are now reflected in  
17 the code.

18 You have to do pre-weld heat treating.  
19 You have to do post-weld heat treating. If you  
20 cold-form an end on a tank you have to anneal it.  
21 And so, what I'm saying is that the programs and  
22 the codes that are in existence that apply to this  
23 tank -- furthermore, none of them were designed to  
24 seismic 4 standards, which significantly increases  
25 the strength of the structures and potentially the

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1 tank, as well.

2 So there are a lot of factors that bring  
3 me to the conclusion that the one times ten to the  
4 negative 5th risk of that type of failure is, in  
5 fact, clearly an upper bound estimate. And, in  
6 fact, there have been no failures of ASME vessels.

7 The other point I think that merits  
8 consideration is that in this country adherence to  
9 the ASME pressure vessel code is statutory. In  
10 the UK and the other places where these accidents  
11 occurred, it's voluntary. There's a major  
12 difference between those two circumstances.

13 And like I said, we've had no failures  
14 of vessels that are built to the standards that  
15 this vessel would be built to.

16 HEARING OFFICER FAY: Thank you.

17 PRESIDING MEMBER MOORE: Thank you very  
18 much.

19 MR. GALATI: I just have one follow-up  
20 question based on something the Committee raised.

21 CROSS-EXAMINATION

22 BY MR. GALATI:

23 Q Based on the low probability that the  
24 meteorological conditions would exist at the same  
25 time, if you had modeled the meteorological



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1 conditions that you could estimate that could  
2 exist at the same time, such as something other  
3 than class F stability, do you think you would  
4 come up with less than a one in a million  
5 probability of occurrence?

6 A I'm not sure. I know I would come up  
7 with much lower potential consequences. And I  
8 think that's probably the more important aspect of  
9 it. As soon as you go to D stability or C  
10 stability, and wind speeds of 5 or 10 miles an  
11 hour, which are probably more consistent with  
12 something that might occur in the direction that  
13 we're talking about, that would substantially  
14 increase the amount of dispersion that occurred,  
15 and considerably reduce the downwind  
16 concentrations, thus impacts.

17 MR. GALATI: Thank you, no further  
18 questions.

19 PRESIDING MEMBER MOORE: All right, now  
20 we'll pick up where I left off, and move to land  
21 use.

22 (Laughter.)

23 HEARING OFFICER FAY: Any redirect?

24 MS. HOLMES: I have no redirect, except  
25 that I believe I only moved portions of exhibit 23

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1           into the record. I'd like to make sure that  
2           exhibits 30 and 31 trail along with that.

3                       HEARING OFFICER FAY: Any objection? So  
4           moved at this time.

5                       (The above-referenced documents,  
6                       previously marked CEC Staff  
7                       exhibits 30 and 31, were received  
8                       in evidence.)

9                       MS. HOLMES: Hearing Officer Fay, could  
10          we take a bit of a break before we move to land  
11          use?

12                      HEARING OFFICER FAY: Ten minutes?

13                      MS. HOLMES: That would be fine. I'd  
14          also like to request that I believe the only issue  
15          of concern with respect to land use is also the  
16          only issue of concern with respect to visual. It  
17          might be easier to have the two witnesses testify  
18          together.

19                      PRESIDING MEMBER MOORE: Just do it  
20          together? Fine.

21                      HEARING OFFICER FAY: That would be  
22          fine, we can swear them both at the same time so  
23          either could answer.

24                      (Brief recess.)

25                      PRESIDING MEMBER MOORE: The best part

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1 of this is that we get to combine land use with  
2 visual, and so with that, having said that, would  
3 it be easier on this topic to let staff open it?

4 MS. HOLMES: I think that might be. If  
5 the applicant is agreeable I think that might be.

6 PRESIDING MEMBER MOORE: Okay, it seems  
7 to me that -- so let's break precedent here, turn  
8 to Ms. Holmes.

9 MS. HOLMES: Thank you very much. Staff  
10 has two witnesses today. Visual resources expert  
11 is Gary Walker and land use witness is Amanda  
12 Stennick. They both need to be sworn.  
13 Whereupon,

14 GARY WALKER and AMANDA STENNICK  
15 were called as witnesses herein and after first  
16 being duly sworn, were examined and testified as  
17 follows:

18 MS. HOLMES: What I'd like to do, Mr.  
19 Fay, is have them testify separately for each of  
20 their sections, and handle the section that  
21 addresses the site plan, the landscape plan, as  
22 it's referred to, at the end as a panel if that's  
23 acceptable to the Hearing Officer and the parties.

24 HEARING OFFICER FAY: After both topics  
25 have been covered. Do you have witnesses for

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1           these topics?

2                       MR. GRATAN:   We have witnesses who  
3           prepared the land use and visual sections, yes.

4                       HEARING OFFICER FAY:   Okay, what I'd  
5           like to do is if we can, with the exception of  
6           that one condition on site mitigation, if we could  
7           take land use first, and then the applicant's  
8           witness, and then go to visual and the applicant's  
9           testimony.

10                      And then we'll come back and visit that  
11           one condition that crosses over just for the sake  
12           of keeping the transcript orderly by topic.

13                      MS. HOLMES:   That's fine.   Staff has no  
14           cross-examination for either of their two  
15           witnesses.

16                      HEARING OFFICER FAY:   Okay.

17                      MR. GRATAN:   And that's perfectly  
18           acceptable and we'll put our witnesses on as  
19           panel.

20                      MS. HOLMES:   All right, we'll start with  
21           land use, then.

22                                      DIRECT EXAMINATION

23           BY MS. HOLMES:

24                      Q           Ms. Stennick, did you prepare the land  
25           use section of exhibit 23, which is the final

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1 staff assessment?

2 A Yes, I did.

3 Q And was a statement of your  
4 qualifications included in exhibit 23?

5 A Yes.

6 Q Do you have any corrections to your  
7 testimony at this time?

8 A Yes, I have one minor correction on page  
9 73, under the paragraph protocol, the next  
10 paragraph, it should state verification.

11 Q So we should replace the word protocol  
12 with the word verification?

13 A No. The paragraph immediately following  
14 the paragraph that begins protocol should have the  
15 word verification off to the side, just as  
16 protocol is off to the side on the previous  
17 paragraph.

18 Q Thank you. Does that complete your  
19 changes?

20 A No. The first sentence, the second  
21 clause, the project owner shall submit the  
22 proposed site plan and, add site plan and.

23 Q Between proposed and landscape?

24 A Yes.

25 Q Does that complete your corrections?

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1           A       Yes, it does.

2           Q       And with those corrections, are the  
3 facts contained in your testimony true and  
4 correct?

5           A       Yes, they are.

6           Q       And do the opinions contained in your  
7 testimony represent your best professional  
8 judgment?

9           A       Yes, they do.

10                   MS. HOLMES:   And at this point I guess  
11 what I'd like to do is to move the land use  
12 portion of exhibit 23 into the record and make Ms.  
13 Stennick available for cross-examination on all  
14 areas of land use except the site plan.

15                   HEARING OFFICER FAY:   Any objection to  
16 receiving the land use testimony?

17                   PRESIDING MEMBER MOORE:   Counsel, do you  
18 have any objection to receiving that testimony?

19                   HEARING OFFICER FAY:   Into evidence?

20                   MR. GRATAN:   No objection.

21                   HEARING OFFICER FAY:   All right, that's  
22 moved into evidence at this point.

23                               (The above-referenced document,  
24                               previously marked Applicant exhibit  
25                               23, section, was received in  
evidence.)

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1                   PRESIDING MEMBER MOORE:    Ms. Poole?

2                   MS. POOLE:    No objection.

3                   HEARING OFFICER FAY:    And, Mr. Grattan,  
4                   you have no cross-examination?

5                   MR. GRATAN:    I have no cross-  
6                   examination.

7                   HEARING OFFICER FAY:    Okay.    Why don't  
8                   we -- do you have any questions, Committee.

9                   PRESIDING MEMBER MOORE:    No, I really  
10                  don't.    This one -- are there intervenors, other  
11                  than Ms. Poole, have questions?    No.

12                  Okay, then it seems to me that having  
13                  Mr. Walker come up next is -- I thought we were  
14                  going to get both topics up at the same time.

15                  MR. GRATAN:    What I'd like to do is let  
16                  staff put on each of its witnesses, let me defer  
17                  cross-examination, if that's --

18                  PRESIDING MEMBER MOORE:    I assumed that  
19                  that's the way it was going to happen.    I'm sorry  
20                  for making that assumption.    I just assumed that  
21                  since we were combining these, we'd get both areas  
22                  of testimony up, and then as it was all one woven  
23                  set of issues, then we would allow cross-  
24                  examination --

25                  MR. GRATAN:    I'd pose the question to

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1 the panel. I'm sorry.

2 PRESIDING MEMBER MOORE: -- or questions  
3 on both. And, frankly, it seems to me in this  
4 case what witness's stuff mixes pretty well with  
5 Amanda's, I mean not very controversy.

6 HEARING OFFICER FAY: That's what you'd  
7 like to do with --

8 PRESIDING MEMBER MOORE: Is that okay?  
9 (Discussion off the record.)

10 PRESIDING MEMBER MOORE: Well, wait,  
11 wait, Mr. Fay is making a point to me, just so  
12 everyone knows what we whispering about here, not  
13 about the money he owes me.

14 (Laughter.)

15 HEARING OFFICER FAY: You keep bringing  
16 that up.

17 PRESIDING MEMBER MOORE: But that --  
18 till I get paid.

19 (Laughter.)

20 PRESIDING MEMBER MOORE: That, in fact,  
21 it's going to make the record easier if we don't  
22 do it the way I'm suggesting, and so I think I'm  
23 going to bow to experience and wisdom on this,  
24 and, Mr. Grattan, I'll overrule and ask if you'd  
25 bring your questions up. I stand corrected.



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1 MR. GRATTAN: Certainly.

2 PRESIDING MEMBER MOORE: Day for  
3 apologies.

4 HEARING OFFICER FAY: If I may clarify,  
5 with the exception of the condition in question  
6 regarding the landscaping mitigation.

7 MS. HOLMES: All right, so Ms. Stennick  
8 is now available for cross-examination on any land  
9 use topic except the site plan?

10 PRESIDING MEMBER MOORE: Right.

11 HEARING OFFICER FAY: Mr. Grattan, any  
12 questions?

13 MR. GRATTAN: Yes, I do.

14 Good afternoon. I guess it's still  
15 afternoon. I have no questions except for --

16 (Laughter.)

17 MR. GRATTAN: I have no questions on the  
18 analysis, thank you, counsel.

19 HEARING OFFICER FAY: And, Ms. Poole, I  
20 think you said no questions?

21 MS. POOLE: No questions.

22 HEARING OFFICER FAY: Okay, I just have  
23 a few.

24 EXAMINATION

25 HEARING OFFICER FAY: Ms. Stennick,

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1       could you just summarize for us, as I understand  
2       your testimony, you found that even though we're  
3       looking at the La Paloma, Sunrise and Elk Hill  
4       cases coming into this area at about the same  
5       time, you did not find that they would cause a  
6       cumulative impact in a land use area.

7               And what are the major factors that  
8       caused you to make that finding?

9               MS. STENNICK:   Conversion of  
10       agricultural land to nonagricultural uses, and  
11       significant change in land use patterns.

12              HEARING OFFICER FAY:   So the projects to  
13       not convert agricultural land?

14              MS. STENNICK:   That's correct.   There's  
15       a very very minor amount of ag land that's going  
16       to be lost.   I think it's .003 acres, and that's  
17       for construction of the transmission lines.

18              HEARING OFFICER FAY:   And also the  
19       projects are not consistent with local land uses,  
20       is that correct?

21              MS. STENNICK:   They are not consistent?

22              HEARING OFFICER FAY:   Is that what you  
23       were saying?

24              MS. STENNICK:   No.   I didn't say that.

25              HEARING OFFICER FAY:   Oh, I thought you

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1 mentioned two conditions. One is that the  
2 projects do not remove or convert significant  
3 amounts of agricultural land --

4 MS. STENNICK: Oh, I'm sorry, yes.

5 HEARING OFFICER FAY: -- and then the  
6 other factor is in terms of compatibility --

7 MS. STENNICK: The other factor is that  
8 the projects would cause a change in land use  
9 patterns, which they do not.

10 HEARING OFFICER FAY: They do not, okay.  
11 Thank you. And is it your understanding that the  
12 applicant has secured rights-of-way for the  
13 transmission route?

14 MS. STENNICK: At this time I'm basing  
15 my information on what was provided to me in the  
16 AFC regarding rights-of-way. I believe the  
17 applicant was negotiating -- is in the process of  
18 negotiating rights-of-way with adjacent land use  
19 owners based on the final transmission route  
20 decided.

21 HEARING OFFICER FAY: And can you give  
22 us a sense of what's involved in mitigation number  
23 5, removal of all obstruction on the right-of-way.  
24 In fact, are there many obstructions there to be  
25 removed? Is this a significant alteration of the

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1 land?

2 MS. STENNICK: No, it would not be a  
3 significant alteration.

4 HEARING OFFICER FAY: Okay. Thank you,  
5 that's all I have.

6 Anything further?

7 Mr. Grattan, why don't you call your  
8 witness on land use.

9 MR. GRATTAN: Thank you. We'd like to  
10 call Sheri Smith.

11 HEARING OFFICER FAY: Would you please  
12 swear the witness.

13 Whereupon,

14 SHERI JODI SMITH  
15 was called as a witness herein and after first  
16 being duly sworn, was examined and testified as  
17 follows:

18 DIRECT EXAMINATION

19 BY MR. GRATTAN:

20 Q Could you give us your name, please, for  
21 the record.

22 A Yes, Sheri J. Smith.

23 Q And they call you Jodi Smith, is that  
24 correct?

25 A Jodi Smith, correct.

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1 Q And have you prepared previously  
2 submitted testimony in this case?

3 A Yes.

4 Q And that was on the land use section?

5 A Yes, that's correct.

6 Q Thank you. Are you sponsoring any  
7 exhibits at the hearing?

8 A Yes, I am.

9 Q Can you tell us what they are?

10 A Yes, in addition to the land use  
11 testimony, I'm sponsoring exhibit 1, the AFC  
12 revisions --

13 PRESIDING MEMBER MOORE: Excuse me,  
14 could you just kind of angle a little bit more  
15 this way so it would make it easier for us to hear  
16 you?

17 MS. SMITH: Certainly.

18 PRESIDING MEMBER MOORE: Mr. Grattan's  
19 probably already heard this.

20 MS. SMITH: Okay. Again, exhibit 1, AFC  
21 and revisions section 8.4 and appendix E, exhibit  
22 2, transmission supplement 2, section 3.4, exhibit  
23 4, appendix B, errata to transmission supplement 2  
24 and Sunrise comments on the PSA; exhibit 5,  
25 responses to CEC data requests, responses 38

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1 through 40, and CEC Staff questions at the June  
2 14, 1999 workshop, revisions to zoning and  
3 existing land use maps; exhibit 7, Sunrise  
4 comments on the PSA, pages 34 to 38; and exhibit  
5 19, notice of decision in the Sunrise lot line  
6 adjustment 2999 Kern County.

7 BY MR. GRATAN:

8 Q And the testimony you have given, can  
9 you affirm that under oath today?

10 A Yes.

11 Q Good. And do you have any corrections  
12 or modifications to that testimony?

13 A No, I don't.

14 Q Could you please summarize your  
15 testimony?

16 A Yes. I reviewed the project description  
17 and the transmission line corridor and the  
18 applicable federal, state and local laws,  
19 ordinances, regulations and standards, the LORS.

20 Applicable standards include the Kern  
21 County ordinances and general plan, and the  
22 Federal Land Policy and Management Act.

23 I concluded that the project and the  
24 indirect impacts and its contribution to  
25 cumulative impacts would be consistent with the

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1 LORS affecting land use.

2 I reviewed the final staff assessment  
3 and the proposed conditions of certification, and  
4 I agree with the basic provisions of the  
5 conditions of certification and the final staff  
6 assessment, with the exception that I believe that  
7 a provision should be allowed to allow the  
8 applicant to provide off-site landscaping as a  
9 substitute for the on-site landscaping should Kern  
10 County agree with that.

11 Q Does the conclude your testimony?

12 A Yes.

13 MR. GRATAN: The witness is --

14 PRESIDING MEMBER MOORE: I just have a  
15 question on that.

16 EXAMINATION

17 PRESIDING MEMBER MOORE: We had a  
18 comment that came up during the initial site visit  
19 concerning the lighting in Derby Acres. And it  
20 seemed to me that just in terms of the quality of  
21 the, although that's not on-site, but it's a  
22 community that's in an area that's adjacent to,  
23 and clearly, if we used the word community as  
24 largely and as broadly as we possibly could, I  
25 think we would find ourselves including Derby

1 Acres in our sense of definition.

2 In your opinion does the inclusion of  
3 lights as an improvement for that community find  
4 an appropriate niche? Lighting.

5 MS. SMITH: Appropriate niche, I'm not  
6 sure --

7 PRESIDING MEMBER MOORE: Well, in the  
8 analysis --

9 MS. SMITH: -- what you're asking.

10 PRESIDING MEMBER MOORE: -- in terms of  
11 what might be considered landscape improvements.

12 MS. SMITH: Under the Kern County  
13 ordinance I don't recall seeing an express --

14 PRESIDING MEMBER MOORE: Yeah, that's  
15 not quite -- let me see if I can rephrase the  
16 question.

17 I guess I'm asking you in your  
18 professional capacity if there were a condition,  
19 for instance, that said the community ought to  
20 be improved by landscaping, and I use the term  
21 landscaping -- large, and I have in mind that  
22 without trying to be pejorative, and I'm really  
23 not, the community is impoverished. I mean it's  
24 not -- it lacks many amenities and many  
25 improvements. And I recall that one of the



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1 statements that someone made at the public hearing  
2 was if they could have anything they wanted, they  
3 weren't worried about the plant so much as they  
4 were about street lighting.

5 It seemed to me kind of an interesting  
6 and really pragmatic sort of thing to ask for.  
7 And so when I was reading the landscape section I  
8 was asking myself, well, are we really just  
9 talking about the plant, or are we talking about  
10 the community-at-large.

11 And if landscaping is an issue and the  
12 community is defined in a larger sense, does the  
13 concept of landscape improvements, for instance a  
14 park or beautification, extend out to the  
15 surrounding community.

16 So I'm asking you that in your  
17 professional capacity.

18 MS. SMITH: Yes, I think it certainly  
19 would. Any type of community improvement that are  
20 not necessarily limited to the specific site,  
21 itself, would be considered landscaping.

22 PRESIDING MEMBER MOORE: Okay, then, Mr.  
23 Grattan, your client --

24 MR. GRATAN: Yes.

25 PRESIDING MEMBER MOORE: -- I assume,

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1 considers themselves part of a broader community  
2 here?

3 MR. GRATAN: My client certainly does,  
4 and just whispered in my ear that we'd be more  
5 than willing to do that if the law doesn't provide  
6 us the --

7 PRESIDING MEMBER MOORE: I understand.

8 MR. GRATAN: -- discretion to do  
9 that --

10 PRESIDING MEMBER MOORE: And I'm not  
11 here to try and create a condition. I'm really  
12 just asking questions and I'm trying to imagine,  
13 in the end, what do we gain, and maybe  
14 considerable by applying landscape standards, such  
15 as the one your consultant was talking about, that  
16 might apply to the plant. Considerable.

17 Does that do us in the community, you  
18 know, the best good, and so I'm just asking the  
19 question and I'll turn back to my staff,  
20 Commission Staff -- that wall, sorry, can't  
21 remember anybody's last name and I have to have  
22 the wall in front of us --

23 (Laughter.)

24 PRESIDING MEMBER MOORE: So, this is not  
25 blackmail time, this is just trying to understand

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1           what it is that we do when we site something, to  
2           put it in context. That's all. So, you've  
3           answered my question. I appreciate it very much.  
4           And, Mr. Grattan, you have, as well.

5                     Let me turn to my colleague. Dr. Rohy,  
6           do you have any questions?

7                     VICE CHAIRMAN ROHY: I have no  
8           questions, but I was very attentive to your line  
9           of reasoning there, and supportive of it.

10                    PRESIDING MEMBER MOORE: With that, Ms.  
11           Holmes --

12                    MS. HOLMES: I have no --

13                    PRESIDING MEMBER MOORE: I'm sorry, got  
14           to move -- I have to move it into --

15                    HEARING OFFICER FAY: Just a couple  
16           questions.

17                    PRESIDING MEMBER MOORE: Before Mr. Fay  
18           asks his questions, don't I have to move --

19                    HEARING OFFICER FAY: Yes, we do. Mr.  
20           Grattan has --

21                    MR. GRATAN: Yes, we do. I would like  
22           to move the exhibits --

23                    HEARING OFFICER FAY: Any objection?

24                    MR. GRATAN: -- which Ms. Smith has  
25           cited into evidence.

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1 HEARING OFFICER FAY: So moved, the  
2 testimony and the exhibits identified by the  
3 witness.

4 (The above-referenced documents,  
5 previously marked Applicant  
6 exhibits 1, 8.4 and appendix E; 2,  
7 3.4; 4,B; 5; 7; and 19, were  
8 received in evidence.)

9 PRESIDING MEMBER MOORE: And you have a  
10 clarifying question?

11 EXAMINATION

12 HEARING OFFICER FAY: Well, I wanted to  
13 ask, Ms. Smith, are you aware of whether the  
14 right-of-way has been secured along the  
15 transmission route?

16 MS. SMITH: I'm not aware whether or not  
17 they've been secured. My understanding was that  
18 they were under negotiation, and pending a  
19 decision on the final selection of the  
20 transmission loop they would be finalized at a  
21 point subsequent to that.

22 HEARING OFFICER FAY: Mr. Grattan, can  
23 you help us? Is that -- what's the timeframe on  
24 this?

25 MR. GRATAN: I can have Paul Dinkel

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1 from Sunrise Cogeneration sworn in and he can  
2 testify as to the status of the acquisition.

3 PRESIDING MEMBER MOORE: Paul's already  
4 sworn.

5 MR. GRATAN: Paul's already sworn.  
6 That's right, he was sworn on the project  
7 description.

8 HEARING OFFICER FAY: Thank you, Mr.  
9 Dinkel, for helping us here. And remind you  
10 you're still under oath.  
11 Whereupon,

12 PAUL DINKEL  
13 was recalled as a witness herein, and having been  
14 previously duly sworn, was examined and testified  
15 further as follows:

16 EXAMINATION

17 MR. DINKEL: As far as the right-of-way  
18 easements, we have submitted agreements to all the  
19 land owners. This includes the oil field  
20 operators and private landowners.

21 And we are close to finalizing about  
22 two-thirds of those right-of-way agreements. The  
23 rest are private landowners that we're in  
24 discussions with right now.

25 HEARING OFFICER FAY: And what is your

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1           timeframe --

2                   PRESIDING MEMBER MOORE:   Can I just  
3 follow on that for a second? Help me with under  
4 discussion. Does that mean that they have an  
5 offer in front of them?

6                   MR. DINKEL:   Yes, they have offer in  
7 front of them, and --

8                   PRESIDING MEMBER MOORE:   So it's not as  
9 though you're still trying to find the owner of  
10 parcel X --

11                  MR. DINKEL:   No, no.

12                  PRESIDING MEMBER MOORE:   -- and see if  
13 you can have a discussion with them?

14                  PRESIDING MEMBER MOORE:   We've located  
15 all of them. We've submitted agreements to all of  
16 them with a certain offer.

17                  So, we're just finalizing those  
18 agreements.

19                  PRESIDING MEMBER MOORE:   Okay.

20                  EXAMINATION - resumed

21                  HEARING OFFICER FAY:   And, Ms. Smith,  
22 I'm afraid I just didn't hear your comment  
23 regarding the staff testimony regarding off-site  
24 or on-site landscaping.

25                  Did you say you agreed with the

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1 flexibility that you found, or --

2 MS. SMITH: Yes, I definitely agree with  
3 the --

4 HEARING OFFICER FAY: So, you're  
5 comfortable --

6 MS. SMITH: -- flexibility.

7 HEARING OFFICER FAY: -- with the staff  
8 conditions on land use as --

9 MR. GRATTAN: No.

10 MS. SMITH: No, that's not included  
11 currently in the condition 1, land use condition  
12 1. It doesn't provide for that sort of  
13 flexibility.

14 HEARING OFFICER FAY: Thank you.

15 PRESIDING MEMBER MOORE: Okay, then with  
16 that, let me turn back to Ms. Holmes.

17 MS. HOLMES: I have no cross-examination  
18 of this witness.

19 PRESIDING MEMBER MOORE: Okay. Ms.  
20 Poole?

21 MS. POOLE: No cross.

22 PRESIDING MEMBER MOORE: Any other  
23 intervenors in the room with cross? All right.

24 With that, I think --

25 HEARING OFFICER FAY: Any redirect,

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1 Mr. Grattan?

2 MR. GRATTAN: No. I have no redirect  
3 until we're ready to talk as a panel.

4 HEARING OFFICER FAY: Okay, all right.

5 PRESIDING MEMBER MOORE: Okay.

6 HEARING OFFICER FAY: Anxiously getting  
7 towards that.

8 PRESIDING MEMBER MOORE: All right, here  
9 we go. We're coming closer. Ms. Holmes.

10 MS. HOLMES: I thank you. I believe  
11 that the visual witness was sworn.  
12 Whereupon,

13 GARY WALKER  
14 was recalled as a witness herein, and having been  
15 previously duly sworn, was examined and testified  
16 further as follows:

17 DIRECT EXAMINATION

18 BY MS. HOLMES:

19 Q Mr. Walker, did you prepare the visual  
20 resources portion of exhibit 23, which is the  
21 final staff assessment?

22 A Yes.

23 Q And is a statement of your  
24 qualifications also included in exhibit 23?

25 A Yes.



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1 Q Do you have any changes or corrections  
2 to your testimony today?

3 A One change. Page 143, the fourth line  
4 from the bottom, middle of the line, the word  
5 showing should be show.

6 Q Does that conclude your corrections?

7 A Yes.

8 Q And with that correction, are the facts  
9 contained in your testimony true and correct to  
10 the best of your knowledge?

11 A Yes.

12 Q And do the opinions contained in your  
13 testimony represent your best professional  
14 judgment?

15 A Yes.

16 MS. HOLMES: Okay, with that I would  
17 like to move the visual resources portion of  
18 exhibit 23 into the record, and make Mr. Walker  
19 available for cross-examination on every subject  
20 except the site plan.

21 HEARING OFFICER FAY: Any objection?

22 MR. GRATAN: No objection.

23 HEARING OFFICER FAY: So moved.

24 //

25 //

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1 (The above-referenced document,  
2 previously marked CEC Staff exhibit  
3 23, section, was received in  
4 evidence.)

5 HEARING OFFICER FAY: Mr. Grattan. I'm  
6 sorry.

7 PRESIDING MEMBER MOORE: Questions?

8 HEARING OFFICER FAY: Cross-examination  
9 of the staff's visual resource witness.

10 PRESIDING MEMBER MOORE: On everything  
11 except the site plan.

12 MR. GRATAN: I presume I'm embargoed  
13 from discussion the condition with the site plan,  
14 so I have no questions. I have no questions.

15 HEARING OFFICER FAY: Okay.

16 PRESIDING MEMBER MOORE: Narrowing the  
17 list.

18 HEARING OFFICER FAY: Ms. Poole, any  
19 questions of Mr. Walker?

20 MS. POOLE: No questions.

21 HEARING OFFICER FAY: Okay.

22 PRESIDING MEMBER MOORE: No, I have  
23 none.

24 MS. HOLMES: What I'd like to do now  
25 then, if it's acceptable to the Committee, --

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1 HEARING OFFICER FAY: Well, --

2 MS. HOLMES: I'm sorry --

3 HEARING OFFICER FAY: -- I've got a few  
4 questions.

5 MS. HOLMES: I'm sorry.

6 EXAMINATION

7 HEARING OFFICER FAY: The requirements,  
8 I guess we can get to that when we get to -- what  
9 about your day sequence in submitting things on  
10 condition VIS4?

11 And, Mr. Walker, tell me if this is  
12 going to be addressed when we deal with -- it is?  
13 All right, okay, I'll withdraw that question then.  
14 We'll just take care of all this when we --

15 PRESIDING MEMBER MOORE: Back to you,  
16 Ms. Holmes.

17 MS. HOLMES: Does the witness have a  
18 different issue? Does the applicant have a  
19 different witness for visual?

20 MR. GRATTAN: Yes, I do. Yes, I do.

21 HEARING OFFICER FAY: Could you call  
22 that witness, please?

23 MR. GRATTAN: Yes, I'd like to bring Mr.  
24 Christopher Elliott to the stand, please.

25 HEARING OFFICER FAY: Could you please

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1 swear the witness.

2 Whereupon,

3 CHRISTOPHER ELLIOTT

4 was called as a witness herein, and after first  
5 having been duly sworn, was examined and testified  
6 as follows:

7 DIRECT EXAMINATION

8 BY MR. GRATAN:

9 Q Could you please give your name, address  
10 and current employment.

11 A Chris Elliott, 2417 I Street,  
12 Sacramento. I work with Jones & Stokes Associates  
13 in Sacramento.

14 Q And have you prepared and previously  
15 submitted written testimony in this AFC  
16 proceeding?

17 A Yes, I have.

18 Q And what testimony was that?

19 A The visual resources section.

20 Q Are you sponsoring any exhibits in this  
21 hearing?

22 A Yes, I am. In addition to my testimony  
23 on visual resources, exhibit 1, AFC and revisions,  
24 section 8.11; exhibit 2, transmission supplement  
25 2, section 3.11; exhibit 5, responses to CEC data

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1 requests, responses 69 through 84, number 104 and  
2 105; and exhibit 7, Sunrise Comments on PSA, pages  
3 50 through 55.

4 Q Very good. Can you affirm that  
5 testimony under oath today?

6 A Yes.

7 Q And do you have any corrections or  
8 modifications to your previously submitted  
9 testimony?

10 A No.

11 Q And could you summarize your testimony?

12 A Yes. I reviewed the likely visual  
13 impacts of the Sunrise Cogeneration Project in  
14 terms of construction impacts for visual  
15 resources, as well as operation, for direct,  
16 indirect and cumulative effects. And found there  
17 to be no significant adverse impacts.

18 And, in addition, I am in agreement with  
19 the staff's conditions of certification with the  
20 exception of Visual 4 which we will be getting to,  
21 I assume.

22 Q Okay, thank you. That concludes your  
23 testimony?

24 A Yes.

25 PRESIDING MEMBER MOORE: Questions,

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1 Ms. Holmes?

2 MS. HOLMES: I have no cross-  
3 examination.

4 HEARING OFFICER FAY: And I assume you  
5 wish to move that into the record?

6 MR. GRATAN: Yes, you assume correctly,  
7 Mr. Hearing Officer, we would --

8 HEARING OFFICER FAY: Without objection,  
9 so moved.

10 (The above-referenced documents,  
11 previously marked Applicant  
12 exhibits 1, 8.11; 2, 3.11; 5; and  
13 7, were received in evidence.)

14 PRESIDING MEMBER MOORE: Ms. Poole?

15 MS. POOLE: No questions.

16 PRESIDING MEMBER MOORE: None? Okay.  
17 Showtime.

18 (Laughter.)

19 PRESIDING MEMBER MOORE: Here we go.

20 MS. HOLMES: Thank you, I'll just  
21 hopefully get this over with fairly quickly.

22 PRESIDING MEMBER MOORE: You mean with  
23 all that anticipation --

24 MS. HOLMES: After all this, yes, all  
25 the anticipation --

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1 MR. GRATTAN: The table is set, counsel.

2 (Laughter.)

3 PRESIDING MEMBER MOORE: Oh, bad phrase.

4 Whereupon,

5 GARY WALKER and AMANDA STENNICK  
6 were recalled as witnesses herein, and having been  
7 previously duly sworn, were examined and testified  
8 further as follows:

9 DIRECT EXAMINATION

10 MS. HOLMES: Mr. Walker and Ms.  
11 Stennick, could you please explain the  
12 relationship between Land Use 1 and Visual 4,  
13 specifically paying attention to the questions of  
14 the sequencing of submission of documents, and the  
15 availability of off-site landscaping as a  
16 mitigation option?

17 MS. STENNICK: Well, land use 1 requires  
18 the applicant to submit a site plan of which the  
19 landscaping plan is, shall we say, a subcomponent  
20 of the site plan.

21 And the verification is that 60 days  
22 prior to any ground disturbance related to  
23 construction that the project owner submit the  
24 site plan and landscape plan and a copy of the  
25 letter of comment from Kern County Planning

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1 Director, any required revisions to that plan,  
2 within 30 days of -- the applicant has 30 days to  
3 notify the Energy Commission Compliance Project  
4 Manager.

5 MS. HOLMES: So is it your contention  
6 that your condition precludes the off-site  
7 mitigation proposal that is accommodated in the  
8 visual condition of certification 4?

9 MS. STENNICK: No, it doesn't preclude  
10 it. I think land use 1 is written in such a way  
11 that it really puts the language for that, if the  
12 applicant chose to go to off-site landscaping or  
13 off-site mitigation that the language for that  
14 would be in the visual condition of approval.

15 MS. HOLMES: So, your condition of  
16 certification would not preclude off-site  
17 mitigation if it were submitted in compliance with  
18 the terms of visual 4?

19 MS. STENNICK: Correct, and also it has  
20 to be in compliance with the County's requirements  
21 for landscaping. In other words, if the applicant  
22 wants to go to off-site landscaping as mitigation,  
23 it has to be -- the landscaping plan has to be  
24 approved by the County.

25 MS. HOLMES: Thank you, --



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1                   PRESIDING MEMBER MOORE:    I'm sorry,  
2           Amanda, could you just say the last sentence  
3           again?

4                   MS. STENNICK:    The landscaping plan has  
5           to be approved by Kern County.

6                   PRESIDING MEMBER MOORE:    What part of  
7           Kern County approves that, the planning --

8                   MS. STENNICK:    It's the planning  
9           department.

10                  PRESIDING MEMBER MOORE:    The planning  
11           department or planning commission?

12                  MS. STENNICK:    Well, it would be  
13           approved by the director of planning, so it would  
14           be the commission.

15                  PRESIDING MEMBER MOORE:    Okay, thanks.

16                  MS. HOLMES:    And, Mr. Walker, is it your  
17           belief that the timing of submission of the  
18           landscaping requirements in your condition, visual  
19           4, is consistent with that in Ms. Stennick's in  
20           land use 1?

21                  MR. WALKER:    Yes, it is, verbatim.

22                  MS. HOLMES:    Thank you.

23                  MR. WALKER:    It was changed from what  
24           was in the preliminary staff assessment to achieve  
25           that congruity.    The applicant has to submit the

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1 site plan at a certain time to comply with land  
2 use 1, and the landscape plan is part of the site  
3 plan. Then that seems appropriate to submit in  
4 regard to visual 4 at the same time.

5 MS. HOLMES: Thank you. These witnesses  
6 are now available for cross-examination with  
7 respect to the site plan and landscaping.

8 PRESIDING MEMBER MOORE: Finally. Let  
9 me ask first, Mr. Fay has some questions that may  
10 clarify things on these. Let me turn to him first  
11 and --

12 MR. GRATAN: Always interested in that,  
13 please.

14 PRESIDING MEMBER MOORE: So let me turn  
15 to his questions first, we'll get them on the  
16 table, come back to the applicant, and then to the  
17 intervenors. All right, well, perhaps they will.

18 EXAMINATION

19 HEARING OFFICER FAY: Now, I understand  
20 that with this clarification both condition land  
21 use 1 and condition visual 4 would allow  
22 unspecified off-site mitigation for land use  
23 and/or visual, is that correct?

24 MS. STENNICK: That's correct.

25 MR. WALKER: It's unspecified at this

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1 point, but the plan would have to specify it.

2 HEARING OFFICER FAY: Correct. But,  
3 you're comfortable leaving the condition open  
4 where the Commission Staff and the Kern County  
5 Planning Department had the option of approving  
6 the plan?

7 MR. WALKER: I am because the  
8 landscaping plan in this particular case is not  
9 required to reduce a significant visual impact to  
10 a less than significant level.

11 It does reduce the visual impact, and  
12 the County Staff specifically wanted on-site  
13 mitigation for that purpose. But since then,  
14 since they've heard about the option of off-site  
15 mitigation, they said they would take it under  
16 advisement if they received such a proposal.  
17 Which they have not, yet.

18 HEARING OFFICER FAY: And to just get  
19 some examples, an idea might be either improve  
20 landscaping at a school or park, or even like  
21 Commission Moore was addressing, possibly lighting  
22 in a nearby community. That would be within the  
23 range of the type of off-site mitigation that you  
24 have in mind?

25 PRESIDING MEMBER MOORE: Larry, before

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1           you even answer that --

2                       MR. WALKER:     Gary.

3                       PRESIDING MEMBER MOORE:   Can't get the  
4           first or last names.   Okay, I quit.   Okay.

5                       Mr. Walker, what I was talking about  
6           ranged not just from lighting, but also to what I  
7           thought there was appearing in the documents, and  
8           that was park-like facilities or something like  
9           that.   And wouldn't that qualify, as well?

10                      I mean, in other words, if you improved  
11           the park environment, as it were, around that  
12           grange building where we had the meeting, is that  
13           not an example of something that could be included  
14           in a landscape plan?

15                      I didn't want to just leave it with the  
16           idea of lighting.

17                      MR. WALKER:   Yes, in fact that's  
18           clearly -- there's clearly more of a nexus for  
19           that kind of off-site mitigation than there is for  
20           lighting.   So, certainly that kind would  
21           definitely be appropriate.

22                      PRESIDING MEMBER MOORE:   And can I just  
23           go one step farther and now I'm imagining that  
24           you're doing the visual analysis of this plant in  
25           the context of the other oil field improvements

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1           that are out there.

2                       Not a lot of them have landscaping  
3           associated with them. And so in the sense that  
4           the community benefit is maximized by having  
5           landscaping in the traditional sense that we  
6           imagine it, trees, play areas or lighting and that  
7           kind of thing, is it sometimes not more  
8           appropriate to locate it in a community setting so  
9           it's not -- the effectiveness doesn't dissipate?

10                   MR. WALKER: Yes, especially because of  
11           the substantial distance of the plant from public  
12           areas, the mitigation won't be that effective. It  
13           would reduce the adverse impacts slightly, but it  
14           wouldn't be that effective and there's not a  
15           significant impact even without the mitigation.

16                   So there is potential for greater  
17           benefit to the area by landscaping somewhere  
18           closer to public use.

19                   PRESIDING MEMBER MOORE: Thanks. I've  
20           piggybacked onto one of Gary's questions, so  
21           I'll --

22                   HEARING OFFICER FAY: When you say it  
23           wouldn't be that effective, you meant landscaping  
24           at the power plant site, itself?

25                   MR. WALKER: At the power plant site.

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1                   HEARING OFFICER FAY:    I understand,  
2                   okay.   And is it possible that this sort of  
3                   approach could actually, since we're dealing with  
4                   at least three power plants in this general  
5                   vicinity, could actually have a cumulative  
6                   benefit?   If the mitigation in each case was off  
7                   site, into an area where the population was more  
8                   concentrated?   That there would actually be a  
9                   cumulative benefit on these --

10                  MR. WALKER:    Yes.

11                  HEARING OFFICER FAY:    Okay, good.

12                  Mr. Grattan, I don't know if that helps  
13                  move this along, at all, but I'd like to turn to  
14                  you for cross-examination.

15                               CROSS-EXAMINATION

16                  MR. GRATAN:    And, again, I'm getting  
17                  old and I don't hear all that well.   But if what  
18                  I'm hearing is what would the Commission Staff be  
19                  willing to revise the Commission so that this  
20                  applicant, and other applicants in the area, could  
21                  contribute to a fund for off-site beautification  
22                  to be used at the discretion of Kern County  
23                  Planning Director, we would be more than  
24                  supportive of that.

25                  MR. WALKER:    Well, that's not exactly

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1           what I --

2                       MR. GRATAN:   Well, Gary, you have to  
3           look at me when you speak, then.

4                       MR. WALKER:   Okay.

5                       PRESIDING MEMBER MOORE:   I'm not sure  
6           that's where we were going, either.   I mean, I  
7           think that, just so my intentions are clear, I  
8           would not want to end up with something that was  
9           so vague that the Kern County Planning Department  
10          could or might not implement it.

11                      I'd rather, if we're going to -- if a  
12          condition were ultimately imposed, that everyone  
13          agreed on, satisfied the visual and land use  
14          concerns, satisfied the contribution needed by the  
15          applicant, and benefitted the community-at-large,  
16          I'd rather have it defined so that it actually  
17          occurred, we knew it was going to occur, we had  
18          some metric that we could measure it by.

19                      So, a fund -- now, that does not  
20          preclude looking at this and saying we ought not  
21          to have a comprehensive plan that future  
22          applicants contributed to, as well, and could  
23          expand on.   I wouldn't want to preclude that.   But  
24          I'd much rather have something where your  
25          landscape consultant devised something that

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1       worked.   We accepted it as part of the plan that  
2       Mr. Walker talked about.   We all concurred it was  
3       a good thing.

4               And then we set aside either money or  
5       actually went and constructed it.   That's more the  
6       direction of the questions that I was asking are.

7               HEARING OFFICER FAY:   And, Mr. Grattan,  
8       as I understand it in the La Paloma case, they  
9       identified off-site landscaping to be done at  
10      McKittrick School.

11              So as far as that project goes, they've  
12      already committed to a particular off-site  
13      project.

14              So I don't think there's something in  
15      the works, as we have in biology where there's  
16      money paid into a fund that sort of does a long-  
17      range effort.

18              MR. GRATAN:   Our first choice was a  
19      replication of the LaPaloma condition.  
20      Understanding that we haven't designated a lucky  
21      recipient as yet.

22              PRESIDING MEMBER MOORE:   A lucky  
23      recipient.

24              (Laughter.)

25              MR. GRATAN:   If we were to designate a



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1       recipient, would that make, Gary -- Mr. Walker,  
2       would that make sense to have the condition  
3       redrafted to basically echo the already-approved  
4       LaPaloma condition, but with a particular  
5       recipient?

6               MR. WALKER:   I don't think that's  
7       necessary, especially since you need the input  
8       from the County on what would be appropriate.

9               It has to satisfy the zoning code, and  
10       they have to be satisfied that whatever, if an  
11       off-site landscaping plan would satisfy the zoning  
12       code in lieu of on-site, then what it might be.

13              So, you know, at this point I don't  
14       think it would be appropriate to specify a  
15       location without consultation and approval by the  
16       County.

17              PRESIDING MEMBER MOORE:   It sounds to me  
18       as though, before we get too far afield on this,  
19       that the existing condition allows what I'm  
20       interested in, sure sounds like we're coincident  
21       in the things that we're interested in, and we  
22       need someone from the County to validate that this  
23       is possible.

24              MR. GRATAN:   Yes.   The applicant's  
25       preference would be not to have its landscape

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1 consultant do the plan. The applicant's  
2 preference would be to have the wherewithal, i.e.,  
3 the money, turned over to the County to do the  
4 plan.

5 However, I'm told we can live with doing  
6 it ourselves.

7 PRESIDING MEMBER MOORE: I think the  
8 condition, as I understand it, would allow either  
9 of those events to take place. So, as I interpret  
10 it from what Mr. Walker's saying, there's enough  
11 flexibility in there to allow this to happen.

12 If I'm wrong, Mr. Walker, please correct  
13 me.

14 MR. WALKER: Yes, I think you're wrong  
15 that it doesn't, as written, allow the flexibility  
16 simply to provide money. The options are  
17 landscaping on site or a landscaping proposal off  
18 site.

19 MS. STENNICK: This condition really is  
20 driven by a chapter in the zoning code which  
21 requires a 5 percent landscaping of the site when  
22 there's an industrial development in ag zone.

23 The applicant, as did La Paloma before  
24 them, chose to do or chooses to do off-site  
25 mitigation. If that's the case, then the

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1 applicant has to confer with Kern County, first of  
2 all, to determine does Kern County want off-site  
3 mitigation, where do they want off-site  
4 mitigation, and how off-site mitigation is going  
5 to be developed and monitored and maintained.

6 PRESIDING MEMBER MOORE: Well, then  
7 would it be appropriate to add, and, Ms. Holmes,  
8 you can kind of guide me along on this, would it  
9 be appropriate then to add onto the existing  
10 condition some language that invoked the power of  
11 consultation with Kern County to get them to  
12 agree? In other words, saying or as agreed to for  
13 any off-site per Kern County --

14 MS. HOLMES: I believe it already says  
15 that, in that it says that the project owner shall  
16 submit a letter from Kern County Planning Director  
17 stating that the site plan conforms to the zoning  
18 code and it's been approved by the County.

19 We're allowing the flexibility of either  
20 on-site or off-site, but we're leaving the  
21 decision with the County, which is where it  
22 belongs under the zoning code.

23 PRESIDING MEMBER MOORE: Okay. I think  
24 it doesn't. I'm wrong.

25 HEARING OFFICER FAY: And this is the

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1 same county that has jurisdiction in the LaPaloma  
2 case?

3 MS. HOLMES: Right, yes.

4 MR. WALKER: But it doesn't allow just  
5 money to be passed to the County. It requires --

6 PRESIDING MEMBER MOORE: Well, all  
7 right.

8 MR. GRATAN: It seems to me that that  
9 was what was proposed in the LaPaloma condition,  
10 but --

11 PRESIDING MEMBER MOORE: Yeah, but if --

12 MS. STENNICK: No.

13 PRESIDING MEMBER MOORE: If the language  
14 says makes funds available, it seems to me that's  
15 in effect what's going to happen. Money passes  
16 through the County to make the event happen.

17 MR. GRATAN: Yes.

18 PRESIDING MEMBER MOORE: I think the  
19 flexibility is there, at least as written, to do  
20 what we're talking about.

21 MS. STENNICK: I just wanted to say that  
22 LaPaloma did submit a landscaping plan. It's not  
23 just a matter of passing money through the County  
24 so they can do --

25 PRESIDING MEMBER MOORE: You have to

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1 have something to spend the money on.

2 MS. STENNICK: Correct.

3 PRESIDING MEMBER MOORE: Right.

4 MR. GRATTAN: They submitted a  
5 landscaping plan for the McKittrick School.

6 MS. STENNICK: Yes.

7 PRESIDING MEMBER MOORE: This may take a  
8 little bit of negotiation or a little bit of site  
9 visit or something with the community down there  
10 to --

11 MR. GRATTAN: We basically -- this has  
12 been a long process. If the staff's feelings, you  
13 know, are that strong, we could probably work  
14 within the condition. But it is certainly our  
15 preference to have this money spent where it does  
16 the most good off-site, and where it gets the  
17 biggest bang for the buck --

18 PRESIDING MEMBER MOORE: I think we're  
19 on the --

20 MR. GRATTAN: -- and --

21 PRESIDING MEMBER MOORE: I think we are  
22 absolutely on the same page, absolutely.

23 MR. WALKER: The only concern I have is  
24 that the money be spent on community  
25 beautification or improvement anyway, some kind of

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1 enhancement of the community. Not the money goes  
2 into the --

3 PRESIDING MEMBER MOORE: Pachenko  
4 machines or --

5 MR. WALKER: Right, it doesn't go into  
6 the general fund for something else. It goes  
7 for -- there's some nexus remaining between the  
8 impact of the project and this mitigation.

9 HEARING OFFICER FAY: In the visual --

10 MR. WALKER: In the visual area.

11 PRESIDING MEMBER MOORE: I believe that  
12 was at the core of the discussions that we've been  
13 having.

14 Mr. Grattan, do you have other  
15 questions?

16 MR. GRATAN: I have no other questions.  
17 But let me pose a question to the Committee and to  
18 staff.

19 If the applicant were to find, before  
20 the record closes, an appropriate place for this  
21 landscaping money to go, would that make things  
22 easier?

23 PRESIDING MEMBER MOORE: Well, I think  
24 that the description of appropriate place probably  
25 means a map, a plan, a sketch of some kind that

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1 goes to what Mr. Walker was talking about. That  
2 is, something that indicates the place is actually  
3 this place and this set of beautification, or this  
4 set of improvement items.

5 I think it's in the most generic form, I  
6 think it's a map of some kind. And I think under  
7 those circumstances if that map were to  
8 materialize before the record was closed, we'd  
9 probably be very open to hearing it.

10 MR. GRATAN: Very good.

11 MS. HOLMES: Staff would like to see --

12 PRESIDING MEMBER MOORE: Of course, of  
13 course, I --

14 MS. HOLMES: -- the County approval.

15 MR. WALKER: Yeah, County approval is  
16 important.

17 PRESIDING MEMBER MOORE: Everyone, yeah,  
18 everyone on this side of your table would probably  
19 be very interested in seeing that.

20 HEARING OFFICER FAY: I just want to  
21 ask, has the County approved the LaPaloma plan to  
22 landscape the McKittrick School?

23 MS. HOLMES: I don't know the answer to  
24 that question.

25 HEARING OFFICER FAY: Do either of you

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1 know?

2 MR. WALKER: I don't know.

3 PRESIDING MEMBER MOORE: We can call the  
4 Planning Director and ask him. That would be  
5 nice.

6 MR. WALKER: We could probably find out  
7 from our own staff that worked on that case.

8 PRESIDING MEMBER MOORE: Good, and why  
9 don't we just include the question of what's the  
10 nature of the map that would have to be drawn to  
11 satisfy something in this case.

12 HEARING OFFICER FAY: Because as I'm  
13 sure Mr. Grattan can anticipate, while we don't  
14 feel bound by the way other Committees handle a  
15 case, it's informative, and we try to be  
16 consistent in the way we handle different  
17 applicants.

18 So, I think the Committee would like to  
19 know how that was handled, the sequence between  
20 the proposal for an improvement plan at McKittrick  
21 School, and actually getting it into the decision,  
22 did the County express support for that at some  
23 point.

24 PRESIDING MEMBER MOORE: Well, plus it  
25 makes sense.



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1 MS. HOLMES: Do you want this in the  
2 form of a filing, or is it sufficient to update  
3 you at the November 5th hearing?

4 PRESIDING MEMBER MOORE: I would be very  
5 happy to just have you update us. I don't think  
6 we need to get very formal about this. I assume  
7 that phone calls will take place between the  
8 County and applicants, and maybe a tour of Derby  
9 Acres in the meantime. And I think we'll probably  
10 look forward to hearing what happened.

11 MR. GRATAN: I feel obligated, if I  
12 can, to add something since both co-counsel and my  
13 colleagues at Radian have been whispering in my  
14 ear on this one more than they've whispered in my  
15 ear through anything else we've dealt with --

16 PRESIDING MEMBER MOORE: Yes, since we  
17 have to report our whispers up here, --

18 MR. GRATAN: -- and that is I do want  
19 to express that the County should have the prime  
20 role in this because we are going through this  
21 particular condition not because of a need to  
22 mitigate anything, which is the testimony on the  
23 record. There's no visual impact to mitigate.  
24 We're doing this because of the County ordinance.

25 And, you know, the County ought to be a

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1 key --

2 PRESIDING MEMBER MOORE: You would be  
3 doing this because of community benefit, I think.  
4 I mean --

5 MR. GRATAN: Well, absolutely.

6 PRESIDING MEMBER MOORE: -- we're not  
7 just bound by ordinances here, we're trying to do  
8 the right thing, I think. And we certainly heard  
9 some testimony from people in the community that  
10 suggest that this is the kind of thing that ought  
11 to flow out of this.

12 Mr. Walker.

13 MR. WALKER: I need to interject, as my  
14 testimony stated, that County Staff did express a  
15 preference for on-site screening at first, because  
16 they felt that that would provide some mitigation.  
17 They didn't say the impact was significant, but it  
18 would mitigate some impact from the project.

19 So, if that isn't to take place, then  
20 whatever else takes place needs to have at least  
21 that much or more benefit.

22 PRESIDING MEMBER MOORE: Oh, that's --  
23 all right, that's fair and clear.

24 Okay. Ms. Poole, did you have  
25 questions?

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1 MS. POOLE: No questions.

2 (Parties speaking simultaneously.)

3 PRESIDING MEMBER MOORE: I forget if I  
4 skip anyone here in the middle. Commissioner  
5 Rohy.

6 VICE CHAIRMAN ROHY: Commissioner Moore,  
7 as I recall, one of the conditions in the LaPaloma  
8 one, and staff should verify this for us, is that  
9 while the landscaping moneys were transferred to  
10 the McKittrick School, the staff believed, and I  
11 believe the Commissioners concurred on that, since  
12 I was one of them, sitting in that hot school room  
13 that day, that the site still needed to be  
14 maintained to a certain level of cleanliness and  
15 sightfulness, if that's a word. It has to be not  
16 unsightly.

17 And so that there was some provision in  
18 there that while you may have rocks around a site,  
19 that you don't have old cans and such around  
20 there, that it be neatly fenced and neatly taken  
21 care of.

22 MR. GRATAN: Yes, we can agree to that.  
23 Our clients from Sunrise aren't here, so I presume  
24 if I've agreed out of turn I'll be the person  
25 who's picking up papers around it.

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1 (Laughter.)

2 PRESIDING MEMBER MOORE: Police patrol.

3 VICE CHAIRMAN ROHY: Well, the point was  
4 that while the landscaping was transferred, that  
5 didn't relieve the owner/applicant from  
6 maintaining the site in --

7 MR. GRATAN: Understood, Commissioner.

8 VICE CHAIRMAN ROHY: -- in a reasonable  
9 manner.

10 MR. GRATAN: Understood.

11 PRESIDING MEMBER MOORE: All right, with  
12 no other questions then, you've all received a  
13 copy of the order for the November 5th hearing.

14 HEARING OFFICER FAY: If you haven't, I  
15 believe there's a stack of them over there. It  
16 was issued today. And this gives notice of the  
17 next hearing.

18 PRESIDING MEMBER MOORE: And we'll  
19 reconvene, I believe it's 9:00, on that day.

20 HEARING OFFICER FAY: In hearing room A.

21 PRESIDING MEMBER MOORE: We are  
22 adjourned, thank you.

23 (Whereupon, at 4:10 p.m., the hearing  
24 was adjourned, to reconvene Friday,  
25 November 5, 1999, in Hearing Room A.)

CERTIFICATE OF REPORTER

I, DEBI BAKER, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Hearing; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 22nd day of October, 1999.

DEBI BAKER

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